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# SEVENTH ANNUAL REPORT

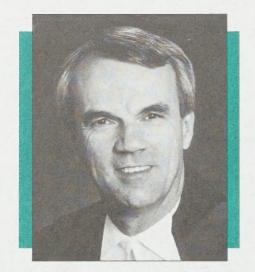
2001 - 2002

# ONTARIO JUDICIAL COUNCIL



The Honourable R. Roy McMurtry CHIEF JUSTICE OF ONTARIO

Co-Chair, Ontario Judicial Council



The Honourable Brian W. Lennox CHIEF JUSTICE ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council



March 31, 2002

The Honourable David Young
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Mr. Attorney:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its seventh year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 2001 to March 31, 2002.

Respectfully submitted,

R. Roy McMurtry
Chief Justice of Ontario

6 Color Charles

Brian W. Lennox

Chief Justice

Ontario Court of Justice



## INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2001 to March 31, 2002.

The Ontario Judicial Council investigates complaints made by the public against provincially appointed judges and masters. In addition, it approves the education plan for provincial judges on an annual basis and has approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

The Ontario Judicial Council had jurisdiction over approximately 260 provincially-appointed judges and masters during the period of time covered by this Annual Report.



## SEVENTH OJC ANNUAL REPORT

2001 - 2002

## TABLE OF CONTENTS

## Submission Letter to The Honourable David Young

## Introduction

1)	Composition and Terms of Appointment	1			
2)	Members	1 – 2			
3)	Administrative Information	2			
4)	Education Plan	3			
5)	Communications	3			
6)	Procedures	3			
7)	Judicial Appointments Advisory Committee	3			
8)	Complaints Procedure	3 – 5			
9)	Summary of Complaints	5			
10)	Case Summaries	7 – 34			
11)	Hearing	35 – 36			
Appendix "A": Do You Have a Complaint?  A-1 – A					
Appendix "B": Procedures Document B-1 – B-26					
Appendix "C": Continuing Education Plan C-1 – C-5					
Appendix "D": Ontario Judical Council D-1 – D-14					
Apper	ndix "E": Reasons for Decision	E-1 – E-5			

## 1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

- the Chief Justice of Ontario (or designate from the Court of Appeal)
- the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- the Associate Chief Justice of the Ontario Court of Justice
- a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society
- four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice of Ontario chairs all proceedings dealing with complaints against specific judges, except for the review panel meetings, which are chaired by a provincial judge, designated by the Judicial Council. The Chief Justice of Ontario also chairs meetings held for the purpose of dealing with applications to accommodate a judge's needs resulting from a disability or meetings held to consider the continuation in office of a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice chairs all other meetings of the Judicial Council.

## 2. Members

## Regular

The membership of the Ontario Judicial Council in its seventh year of operation (April 1, 2001 to March 31, 2002) was as follows:

## Judicial Members:

junctui members.
CHIEF JUSTICE OF ONTARIO  Roy McMurtry(Toronto)
CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE Brian W. Lennox(Ottawa/Toronto)
ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE  J. David Wake
REGIONAL SENIOR JUSTICE  Donald A. Ebbs
TWO JUDGES APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE
The Honourable Madam Justice Lynn King(Toronto) (to September 28, 2001)
The Honourable Mr. Justice Alexander M. Graham(Woodstock) (to September 1, 2001)
The Honourable Madam Justice Marjoh Agro(Milton) (from September 29, 2001)
The Honourable Madam Justice Deborah Livingstone

## Lawyer Members:

(from June 22, 2001)

(from September 2, 2001)

## TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Robert P. Armstrong, Q.C(Toronto)
Vern P. Krishna, Q.C(Toronto)

.....(London)

1

## LAWYER DESIGNATED BY THE TREASURER OF THE LAW SOCIETY OF UPPER CANADA

Julian Porter, O.C. .....(Toronto)
(from September 28, 2001)

## LAWYER DESIGNATED BY THE LAW SOCIETY OF UPPER CANADA

## **Community Members:**

PAUL HAMMOND .....(Bracebridge)
President and CEO, Muskoka Transport Ltd.

WILLIAM JAMES .....(Toronto)
Chair, Inmet Mining

HENRY WETELAINEN ......(Wabigoon)
Ontario Metis – Aboriginal Association

One Lay Member Position – vacant – (from February 28, 2001)

## Members – Temporary

Sections 87 and 87.1 of the *Courts of Justice Act* gives the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of the Superior Court of Justice – either a master or a provincial judge who presides in "Small Claims Court", as the case may be.

During the period of time covered by this report, the following individuals served as temporary members of the Ontario Judicial Council when dealing with complaints against these provincially-appointed judges and masters: -

#### MASTERS

#### **JUDGES**

- Master Basil T. Clark, Q.C.
- Master R.B. Linton, Q.C
- The Honourable Mr. Justice M.D. Godfrey

• Master R B Peterson

• The Honourable Madam Justice Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following judge of the Ontario Court of Justice has been appointed by the Chief Justice to serve as a temporary member of the Ontario Judicial Council when required:

The Honourable Justice Bernard M. Kelly

## 3. Administrative Information

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils' offices are used primarily for meetings of both Councils and their members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

In the seventh year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, a part-time assistant registrar and a secretary:

VALERIE P. SHARP, LL.B. – Registrar

ROBERT DUNGEY – A/Assistant Registrar

(to October 2, 2001)

JANICE CHEONG – Secretary

## 4. Education Plan

The Chief Justice of the Ontario Court of Justice is required, by section 51.10 of the *Courts of Justice Act*, to implement, and make public, a plan for the continuing judicial education of provincial judges and such education plan is required to be approved by the Judicial Council as required by subs. 51.10(1). During the period of time covered by this Annual Report a continuing education plan was developed by the Chief Justice in conjunction with the Education Secretariat and the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 2001-2002 can be found at Appendix "C".

## 5. Communications

During the seventh year of operation, the website of the Ontario Judicial Council was developed to include information about upcoming hearings. As well, copies of "Reasons for Decision" are posted on the website as soon as they are released and will continue to be posted until they are incorporated into an Annual Report. The website will continue to be developed and will eventually include an "on-line" version of the most recent publicly released Annual Report, together with copies of all of the case summaries and Reasons for Decision that have been released by the OJC throughout its previous years of operation.

The address of the OJC website is: www.ontariocourts.on.ca/.

## 6. Procedures

Some minor changes were made to the OJC Procedures document to allow for the speedier processing of complaint files. The Registrar of the OJC now makes an initial assessment of each complaint file as it is opened and determines whether or not a transcript and/or an audiotape of the court proceedings will be necessary for the complaint subcommittee's investigation. If the Registrar determines that is the case, the material is ordered at the time the file is opened. This results in a significant savings of time. The Registrar may also recommend that a complaint be dismissed by the complaint subcommittee without further investigation if the Registrar is of the opinion that a complaint is outside the jurisdiction of the

OJC or is frivolous, vexatious or an abuse of process as set out in the governing legislation. The Registrar's assessment of a complaint is subject always to the assessment of the members of the investigating complaint subcommittee and its unanimous decision about a complaint is subject to the review of the members of the review panel. A detailed outline of the OJC's procedures is included in Appendix "B".

## 7. Judicial Appointments Advisory Committee

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council no longer has any direct involvement in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee (J.A.A.C.) as its representative. The Honourable Justice Lynn King served as the Judicial Council's representative on the Judicial Appointments Advisory Committee until the expiration of her term as a member of the OJC on September 28, 2001. The Honourable Madam Justice Marjoh Agro was appointed by the OJC to act as its representative on J.A.A.C. from September 29, 2001.

## 8. The Complaints Procedure

A complaint subcommittee of Judicial Council members, comprised always of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice, or a master) and a lay member, screens all complaints made to the Council. The governing legislation empowers the complaint subcommittee to screen out complaints which are either outside the jurisdiction of the Council (i.e., complaints about federally appointed judges, matters for appeal, etc.) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee. A more detailed outline of the Judicial Council's procedures is included as Appendix "B".

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, the complaint subcommittee shall refer the complaint to the Council to determine what action should be taken.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. The Council must develop criteria to determine which complaints are appropriate to refer to mediation. The Council (or a review panel thereof), will review the recommended disposition of a complaint (if any) made by a complaint subcommittee and may approve the disposition or replace any decision of the complaint subcommittee if the Council (or review panel), decides the decision was not appropriate. If a complaint has been referred to the Council by the complaint subcommittee, the Council (or a review panel thereof), may dismiss the complaint, refer it to the Chief Justice of the Ontario Court of Justice or a mediator or order that a hearing into the complaint be held. Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant or the subject judge.

Complaint subcommittee members who participated in the screening of the complaint are not to participate in its review by Council or a subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered.

By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of six members of Council – two members of the complaint subcommittee and four members of the review panel.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process up to that point. At least one

member of a hearing panel is to be a lay member and the Chief Justice of Ontario, or his designate from the Court of Appeal, is to chair the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under section 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public. The identity of a judge, after a closed hearing, will only be disclosed in exceptional circumstances as determined by the Council. In certain circumstances, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a judge. The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.

After a hearing, the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more sanctions or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed by the Judicial Council for misconduct are as follows:

- a warning
- a reprimand
- an order to the judge to apologize to the complainant or to any other person
- an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge
- suspension, with pay, for any period
- suspension, without pay, but with benefits, for up to thirty days

NB: any combination of the above sanctions may be imposed

 a recommendation to the Attorney General that the judge be removed from office

NB: this last sanction is not to be combined with any other sanction

The question of compensation of the judge's costs incurred for legal services in the investigation of a complaint and/or hearing into a complaint may be considered by the review panel or by a hearing panel when a hearing into the complaint is held. The Council is empowered to order compensation of costs for legal services (based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services) and the Attorney General is required to pay compensation to the judge in accordance with the recommendation.

The legislative provisions of the *Courts of Justice Act* concerning the Ontario Judicial Council are included as Appendix "D" to this Report.

## 9. Summary of Complaints

The Ontario Judicial Council received 52 complaints in its seventh year of operation, as well as carrying forward 49 complaint files from previous years. Of these 101 complaints, 63 were closed before March 31, 2002, leaving 38 complaints to be carried over into the eighth year of operation.

An investigation was conducted in all cases. The complaint subcommittee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about the complaint. In some instances, further investigation was conducted where it was warranted. In all cases, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation, which had been conducted.

The Judicial Council dismissed 57 of the 63 complaint files that were closed during the period of time covered by this report.

Thirty-five (35) of the 57 complaint files dismissed were found to be outside the jurisdiction of the Council. Complaint files that were dismissed because they were found to be outside the jurisdiction of the Council are usually matters that are properly the subject of an appeal to another court (for example, a complainant did not agree with the sentence a judge handed down or a decision that had been made) and/or are matters where no actual allegation of judicial misconduct had been made but dissatisfaction with a judge's decision was expressed. This was the case with 9 of the 35 complaint files that fell into this category. Twenty-six (26) of the 35 complaint files that were dismissed because they were found to be outside the jurisdiction of the OJC combined what was determined to be an unfounded allegation of bias, racism, sexism, or "improper actions" with the complaint about an appealable matter.

Twenty-two (22) of the 57 complaint files dismissed by the Ontario Judicial Council were determined to be unfounded after investigation. These 22 complaint files involved allegations that a judge had improperly conducted a case or had engaged in improper or illegal activity (e.g., tampering with court records), allegations of improper behaviour on the bench such as a judge being rude, belligerent, etc., or allegations that a judge's decision was made as a result of his or her alleged lack of impartiality, a conflict of interest or some form of bias.

Of the remaining 6 complaint files that were closed during the period of time covered by this report, it was determined that the OJC had no jurisdiction over the judges complained against in two files (file nos. 05-021/99 and 06-032/00), two complaints were dismissed as abandoned by the complainants (file nos. 06-028/00 and 07-002/01) and two complaint files were referred to a hearing (file nos. 04-017/98 and 05-030/99),

FISCAL YEAR:	95/96	96/97	97/98	98/99	99/00	00/01	01/02
Opened During Year	54	71	66	77	59	55	52
Continued from Previous Year	N/A	21	41	51	64	57	49
Total Files Open During Year	54	92	107	128	123	112	101
Closed During Year	33	51	56	64	66	63	63
Remaining at Year end	21	41	51	64	57	49	38

Files are given a two-digit prefix indicating the year of Council's operation in which they were opened, followed by a sequential three-digit file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 06-55/01 was the fifty-fifth file opened in the sixth year of operation and was opened in calendar year 2001.).

## 10. Case Summaries

In all cases that were closed during the year, notice of the Judicial Council's decision, with the reason(s) therefore, was given to the complainant and to the subject judge, in accordance with the judge's instructions on notice (please see page B-26 of the O.J.C. Procedures Document, Appendix "B").

Details of each complaint with identifying information removed, where applicable, follow.

**\* \* \*** 

#### CASE NO. 05-004/99

The complainant was in court charged with uttering a threat. The complainant was involved in on-going civil litigation with the recipient of the alleged threat and stated that there was much "contention" in the civil suit and it was "well known in the community that Ithe victim of the threat] and [the complainant] do not like one another". The complainant alleged that the judge who was assigned to hear the criminal charge "had to know of the conflict and had to know [the victiml" and the complainant was of the view that "to not disclose this, even when pressed, does not give the appearance of justice". The complainant further alleged that an Ontario Provincial Police officer attended his residence to advise him that the judge "had communicated" with the police officer that the judge "was not thrilled about [the complainant] filing the complaint" with the Judicial Council. The complainant stated that "for a judge to advise a police officer of this, in [his] view, is unjustifiable and must create an apprehension of bias". The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and the judge had recused himself and set a new date for trial before a different judge. Before agreeing to dismiss the complaint, the review panel instructed the complaint subcommittee to ascertain whether or not the police officer had been apprised by the judge of the complaint and whether or not the police officer spoke to the complainant on his own initiative or at the request of the judge. The complaint subcommittee retained a private investigator to interview the police officer. The

complaint subcommittee reported back to the review panel that the private investigator had found no basis for the complainant's allegations and again recommended that the complaint be dismissed as unfounded and based on its' view that there was no judicial misconduct evident and the judge was not in conflict or biased against the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 05-012/99

The complainant, who was not represented by counsel, appeared in court on three charges including public mischief and uttering a threat. The complainant alleged that the judge ordered the trial to continue without ruling on a motion to resolve outstanding issues. The complainant further alleged that the judge limited the time the defence could cross examine and advised a witness not to answer a question re: the complainant's alibi defence. The complaint subcommittee reviewed the transcript of the hearing and recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the decisions he did in this case. The complaint subcommittee noted that if the judge committed errors in law (and the OJC made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 05-013/99

The complainant was charged with several counts of threatening and public mischief. The charges against him were laid on separate occasions and he appeared before two different judges who were each hearing some of the charges he was facing. The complainant alleged that the Crown Attorneys, police officers and witnesses overlapped on the various charges and the evidence was thereby, "contaminated". The complainant asked for an adjournment from one of the judges he had complained about and his adjournment request was denied. The complainant alleged that he was denied justice because the judge was biased and refused to withdraw from his case. The complaint subcommittee ordered and reviewed a copy of the audiotape of the court proceedings. The complaint subcommittee also requested further information from the complainant with regard to the status of the charges before the courts and received no response from the complainant. The complaint subcommittee recommended that the complaint be dismissed because, in their view, there was no evidence to support the complainant's allegation of bias. The complaint subcommittee further concluded that, in its view, there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 05-017/99

The complainant was an observer in Small Claims Court. The complainant alleged that the presiding judge's "manner and conduct" was "rude" and "argumentative". The complainant further alleged that the judge "treated everyone with complete disrespect". The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of the proceedings in court on the day in question. The complaint subcommittee recommended that the complaint be dismissed. The complaint subcommittee reported that it was satisfied that, although there was sporadic irritation expressed by the judge, which was unfortunate, in its view the judge's conduct fell short of judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 05-021/99

The complainant alleged that approximately two years prior to appearing in court on a child welfare matter, she'd had an encounter with the presiding judge wherein she had refused his inappropriate sexual advances. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee reported that the judge strenuously denied any contact or acquaintance with the complainant prior to the family court proceedings and stated that the allegations of the complainant were completely false. The complaint subcommittee wrote to the complainant inquiring as to whether the alleged incident of sexual assault was reported to the police. The complainant informed the complaint subcommittee that she "didn't pursue sexual harassment charges" because she "knew of his [the judge's] statues

(sic) being a judge and prominent figure" and "feared him" because she "didn't accept his sexual advances". The complaint subcommittee once again wrote to the complainant to inform her that the allegations were such that, if true, would amount to criminal conduct by a judicial officer and to proceed further on this aspect of the complaint, the matter could be referred to the Ministry of the Attorney General to fully investigate but only if the complainant agreed to the OJC disclosing her name. The complaint subcommittee reported that it did not receive a response to this letter and wrote the complainant twice more without any reply from her. The complaint subcommittee further reported that the judge complained against had since retired, and that as a result, the OJC no longer had any jurisdiction to deal with the complaint. The complaint subcommittee recommended that the file be closed and the complainant was advised by letter that law enforcement agencies could pursue an investigation if she reported the alleged assault to them.

#### CASE NO. 05-025/99

The complainant wrote to the Judicial Council regarding a judge who was involved in a pre-trial conference in a child custody hearing. The complainant alleged that the judge "did not appear to be truly open to hear both sides of the case, but instead appeared biased against me [the complainant] because I am a father and not a mother." The complainant further alleged that the judge made "biased statements" and said, "a sick child should only be with her mother and not at her father's home." Because there was no transcript of evidence available (the pre-trial hearing was not "on the record"), the complaint

subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as it was satisfied with the judge's response to all questions regarding the complaint. The complaint subcommittee noted that the judge categorically denied stating that a sick child should only be at his or her mother's home and noted in her response that standard practice is that any access agreements between parties are usually temporarily cancelled if a child is sick. The judge further noted that she could not recall the context of any remarks about the complainant's child being sick or why it was raised at the pre-trial but that obviously there must have been a disagreement. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 05-028/99

The complainant stated that his wife was the successful party to a lawsuit arising out of a traffic accident and that he had accompanied her to Small Claims Court, together with a family friend, a former lawyer, who agreed to act as her agent. The complainant stated that he "sat in the body of the Court and listened in utter amazement". The complainant alleged that the presiding judge was "intimidating, bellicose and downright rude not only to [the complainant's] wife but also to [her agent]". The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of the evidence. The complaint subcommittee recommended that the complaint be dismissed because, although the audiotape did show a degree of abruptness and impatience that probably contributed to the complaint, it

did not demonstrate behaviour which, in its view, would constitute judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-002/00

The complainant was in court for a child custody matter concerning her granddaughter. The complainant alleged that the judge had "no regard either to Constitution or to [her] right to defend [herself]". The complainant further alleged that the judge did not allow her, the complainant's daughter or their lawyer "to say a single word in [their] defense [sic]". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge: The complaint subcommittee recommended that the complaint be dismissed because the complainant could appeal the judgment of the court or any irregularities in procedure and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The complaint subcommittee noted that the transcript revealed that, in some instances, the judge made inappropriate comments which it regarded as unfortunate but did not, in its view, amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-009/00

The complainant, who was not represented by counsel, was the plaintiff in a Small Claims Court hearing. The complainant advised that the matter between himself and the defendant was resolved "to both parties' satisfaction." The complainant expressed disappointment in the judge's alleged "aggressive and demeaning behaviour" and alleged this "impaired [the judge's] ability to hear and judge all the relevant facts of the issue". The complainant further alleged that the judge "would not explain the basis of [the] decision and [the judge's] angry and hostile manner prevented us, out of fear, from asking for an explanation". The complainant stated that the judge's conduct convinced him that if he "were to continue in this matter, [he] would have had to hire legal council [sic]". The complaint subcommittee ordered a copy of the transcript and audiotape of the evidence and was advised by the Court Reporter's Office that motions in Small Claims Court are rarely recorded and a transcript would not be available. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee reported that the judge indicated that the complainant had "very aggressively" challenged the judge's authority and it had been necessary to be forceful. In the response, the judge asked the complaint subcommittee to consult the opposing counsel, who was "present in the courtroom and who may be of assistance". The judge noted, "regardless of their [opposing counsel's] observations, [the judge] would like to apologize to [the complainant] since his perceptions are so strongly articulated". The complaint subcommittee contacted the opposing counsel, who advised he had sent his articling student on the day in

question. The complaint subcommittee interviewed the articling student, who advised that the judge was terse and to the point but she did not consider the judge's behaviour as being "out of the ordinary". The complaint subcommittee recommended that the complaint be dismissed, as they were satisfied with the judge's response and apology, as well as the observations of the witness interviewed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. The judge's apology was conveyed to the complainant by letter from the OJC.

#### CASE NO. 06-011/00

The complainant wrote to the Judicial Council as the President of a civil rights/educational organization to protest the "injudicious and inappropriate behaviour" attributed to a judge by a columnist in an article published in a large circulation daily newspaper. The newspaper columnist had described the acquittal of six "Nazi skinheads" who had been charged with wilfully promoting hatred. The complainant, who admittedly had not read the trial transcript, lodged a complaint against the trial judge based on the "inappropriate remarks" attributed to him by the newspaper columnist. The complaint subcommittee reviewed the newspaper article and the transcript of the trial and requested a response from the judge on the following criticisms levelled by the columnist: 1) the judge's failure to reprimand the accused when they laughed at a remark he had made; 2) the judge's interpretation of the initials "CJC" as "Canadian Judicial Council"; 3) the judge's "badgering" of the Crown to prove the relevance of hate material to the issues at hand; and 4) the judge's equation of the "Hitlerian salute" with someone waving "Hi".

The judge responded to the complaint, through counsel, and the complaint subcommittee advised the review panel that his response provided a complete and plausible explanation for his conduct in what was undoubtedly an emotionally charged trial. The complaint subcommittee reported that the judge provided the following comments on the points he was asked to address:

- 1) In this instance, the Crown had a transcript of the lyrics of a CD, "Declaration of War" and the police detective on the stand was required to read them out loud and was obviously uncomfortable doing so. The judge advised that, in an effort to reduce the tension in the courtroom, he had said, "I was kind of hoping you would sing them". He further advised that he did not initially see or hear the accused laughing at his remark but that, as soon as he did notice, he immediately terminated the inappropriate conduct with a stern look a response that would not appear on the record, as he did not say anything.
- 2) With respect to the second criticism, the judge advised that the point being made by his observation was that the letters "CJC" could stand for many things, including the "Canadian Judicial Council" although he agreed with the Crown that the acronym CJC had to be taken in context and, quite obviously in the context of this trial, referred to the "Canadian Jewish Congress" and this was made clear on the record.
- 3) With respect to the third criticism that he had been "badgering" the Crown to prove the relevance of hate material, the judge stated that he was simply calling the Crown's attention to

difficulties he was having with the evidence being led. The judge noted that there were four adults and two young offenders charged and that a total of 61 items were seized from the six defendants. He advised that at trial an issue arose about what use could be made of items seized from one defendant against the other defendants and, secondly, what use could be made of the items against the person from whom they were seized. As noted in his response, both issues could only be resolved by evidence that connected possession of the items to a person or group of persons whose purpose was to advocate hatred of an identifiable minority or by evidence which tended to show that mere possession of the items was capable of an inference that the possessor harboured a hatred for an identifiable minority and the judge had simply observed the weakness of the evidence in this regard. The judge stated that he did not believe that bringing what he perceived to be a deficiency in the Crown's case to the Crown's attention could amount to "badgering".

4) With respect to the criticism that the judge equated someone making the "Hitlerian salute" with someone waving "hi", the judge stated that he was attempting to make the point to the Crown that more than one inference could be made from the raising of someone's right arm, unaccompanied by words or other conduct and that again, context would be important.

The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the judge had not engaged in injudicious or inappropriate behaviour in the conduct of this trial. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-013/00

The complainant's married daughter was in court on a motion to set aside a separation agreement. The complainant stated that her daughter was "going for full custody of her 2 children from her ex-husband". The complainant alleged that her daughter was in court for ten minutes when the judge told her daughter and ex-husband "that they should settle this between themselves and they don't even need lawyers". The complainant further alleged that the judge said that "the file was to [sic] big and he didn't have time to read it". The complaint subcommittee ordered and reviewed a copy of the audiotape and transcript of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed because it was its view that it was not the fault of the judge that the file had not been provided to him earlier and, in any event, the judge was not able to set aside a separation agreement on a motion, as the complainant's daughter had requested. The complaint subcommittee noted that in the judge's response he stated that he had "strongly urged the parties to talk to each other, with the aid of counsel, in an attempt to reach an agreement, instead of a trial". The complaint subcommittee further noted that the judge stated that the complainant's daughter had since withdrawn her request to have the separation agreement set aside. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-020/00

The complainant, who was not represented by counsel, appeared in court on a temporary care/custody motion and a contempt motion against the Children's Aid Society. The complainant was unhappy with the social worker from the Children's Aid Society and the judge. The complainant alleged that the judge dismissed his motion after the social worker whispered something to the judge. The complainant further alleged that "this whisper" caused the judge to "chuckle and dismiss the motion". The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge stated that he did not chuckle in dismissing the motion for contempt or in directing that the child before the court remain in the temporary care and custody of the Children's Aid Society. The judge further stated that if the social worker whispered anything in the complainant's presence, the judge did not hear it. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the judge and ordered and reviewed a copy of the audiotape. The complaint subcommittee recommended that the complaint be dismissed because the judge's letter of response was verified by the audiotape, which disclosed no evidence of judicial misconduct, as alleged. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-021/00

The complainant and his common law wife, who were not represented by counsel, were the respondents in a custody matter involving the Children's Aid Society. The complainant alleged that the judge laughed three times during the proceedings and stated that the welfare of the

child was irrelevant. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The judge stated that he never said the welfare of the child was irrelevant and denied laughing at any time during the proceedings. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the judge and ordered and reviewed a copy of the audiotape. The complaint subcommittee recommended that the complaint be dismissed because the audiotape did not support any of the allegations of the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-022/00

The complainant, who is a doctor of family medicine, was in court charged with threatening and assaulting his wife. The complainant alleged that, at the sentencing hearing, the judge stated that the complainant had committed adultery. The complainant stated the allegation of adultery was "false and was not borne out in any of the evidence that was presented" at trial. The complainant further stated that "such an allegation was directed at [the complainant] being a person of color [sic] and the supposition that [the complainant is] not able to control [his] sexual urges." The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge. After reviewing all of the material the complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making findings of the complainant's unfaithfulness to his wife on the basis of what the judge perceived to be the facts and that the decisions

made were within the judge's jurisdiction. The complaint subcommittee reported that the judge's response constituted a full answer and that his findings of fact on this issue had nothing to do with the complainant being a person of colour. The complaint subcommittee noted that if the judge committed errors in law (and the OJC made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-028/00

The complainant was involved in an on-going family court matter. The complainant alleged that the judge had a "racist attitude and behaviour in court". The complainant further alleged that the judge "made unnecessary and disrespectful comments". The complaint subcommittee wrote to the complainant, asking for details of the court dates so that further investigation could be conducted. There was no response to the Judicial Council's letter and the complaint subcommittee recommended that the complaint be dismissed as abandoned, subject to being re-opened should the complainant see fit to provide further details. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-029/00

The complainant, who was an observer in court, is the grandmother of children involved in a child welfare matter involving the Children's Aid Society. The complainant alleged that the judge treated her daughter, the mother of the children,

unfairly. The complainant further alleged that the daughter's lawyer was not given a chance to speak. The complainant noted that the Children's Aid Society and the father had "a lot of time to speak". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee noted that the judge heard from all parties, including the mother's lawyer, and decided to keep the children in care for a further period of time. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. The complaint subcommittee further noted that if the judge committed errors in law (and the OJC made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-031/00

The complainant was involved in a lengthy Small Claims Court trial. The complainant alleged that the judge ordered court reporters to make deletions to portions of the transcript of the trial. The complainant alleged that the judge had a "tantrum" in court and that the "tantrum" was subsequently omitted from the transcript. The complainant further alleged that during cross-examination he told the judge that he "could not answer a question as it was phrased", and the judge "turned quite livid", screamed, "You can answer that question!", then "stomped his feet, jumped out of his chair, and ran into his Chambers". The

complaint subcommittee asked for and reviewed a response to the complaint from the judge in which he denied the complainant's allegations. The complainant subcommittee also interviewed one of the court reporters (the other court reporter involved having left the employment of the Ministry of the Attorney General). The complaint subcommittee recommended that the complaint be dismissed as the court reporter confirmed the judge's position that he did not request any deletion to the transcript. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-032/00

The complainant was acting as the agent for the defendant in Small Claims Court and alleged that the judge before whom they appeared was condescending, insensitive and rude during the hearing of a motion. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge indicated that he was not sitting on motions on the day that the complainant was in court and that the judge before whom the complainant had appeared was a deputy judge. The review panel instructed the complaint subcommittee to inform the complainant that he had complained about a jurist over whom the OJC has no jurisdiction. The complaint subcommittee subsequently advised that the complainant acknowledged that it was possible that he had the wrong judge and that since he and the defendant were satisfied with the judgment of the court, his reason for filing this complaint was "merely to assist others who may encounter or experience" a similar situation.

#### CASE NO. 06-033/00

The complainant was the plaintiff involved in a Small Claims Court motion hearing. The complainant stated that the judge had asked him why the Notice of Motion filed should not proceed. The complainant further stated that the first reason he gave the judge was that the defendant had filed the motion and affidavit of service on the wrong forms. The complainant alleged that the judge then said, "I don't care if they were written on toilet paper". The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee noted that in the judge's response, the judge could not recall the particular complainant or the comment but did recall someone insisting that the use of an improper form was decisive. The judge further noted that this individual was told that it was not fatal to use an incorrect form but that he had continued to debate the point and resisted moving on to other grounds of objection. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the statement, if uttered, did not constitute judicial misconduct in the circumstances. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-035/00

The complainant, who was not represented by counsel, was the plaintiff involved in a landlord/tenant matter in Small Claims Court. The complainant alleged that the judge "refused to listen to [his] responses and berated [the complainant] for not giving one word answers." The complaint subcommittee ordered and reviewed a copy of the transcript and asked for an audiotape of the evidence. The complaint subcommittee

was advised by the Court Reporter's Office that an audiotape would be unavailable as there had been no tape copying facilities available at the hearing. The complaint subcommittee recommended that the complaint be dismissed because the transcript showed that the judge had not "berated" the complainant but had shown patience and fairness in the matter before him. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-036/00

The complainant was the defendant in a Small Claims Court matter and attended for a pre-trial hearing in the judge's chambers. The complainant alleged that the judge "was prejudice (sic) from the beginning to the end" of the pre-trial conference and "never looked at [the complainant's] defense [sic]." The complainant further alleged that the judge used the word "frigging" during the conference which left the complainant "dumbfounded". The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee noted that one of the purposes of a pre-trial is to obtain the pre-trial judge's assessment of the merits of the case to be tried. The complaint subcommittee reported that it appeared from the complaint and the reply from the judge that the complainant might have been dissatisfied with the assessment of the case by the judge. The complaint subcommittee further reported that the response from the judge indicated that he did not remember using the word "frigging". The complaint subcommittee recommended that the complaint be dismissed because the complaint subcommittee found no evidence of prejudice and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint sub-committee's recommendation that the complaint be dismissed.

#### CASE NO. 06-037/00

The complainant, an elderly lady who was not represented by counsel, was in court charged with assault with a broom. The complainant alleged that the judge refused to ask the witnesses to speak up during the trial, despite several requests from the complainant who was hard of hearing, and alleged that the judge favoured the victims of the alleged assault. The complainant further alleged that the judge shouted in a loud voice, "This is Canada" while waving The Criminal Code over his head, thereby discriminating against the complainant who is Irish. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the complainant misperceived the nature of the trial process - in spite of the judge's best efforts to explain it to her and that the judge may have been speaking in a loud voice to overcome the complainant's admitted hearing problem. The complaint subcommittee further noted that the judge's remark; "This is Canada" was not intended to undermine the complainant's Irish heritage. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed because without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC.

#### CASE NO. 06-038/00

The complainant, the victim in a domestic assault case, alleged that the "outcome [of the trial] was highly irregular and unfair". The complainant alleged that the judge found the accused "guilty of assault, then within minutes struck his own conviction" and dropped the charge against the accused based on the accused's plea that he had to attend an exhibition of his artwork in Paris, France. The complainant further alleged that friends informed her that the judge collected art from the accused and the disposition of the charge against the accused by peace bond was "pre-arranged". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as it was satisfied that the judge only became aware of the accused's occupation as an artist during the course of the trial and had no connection to the accused. The complaint subcommittee noted that if the complainant is dissatisfied with the judgment of the court or any irregularities in procedure, she can request the Crown to seek an appeal of the decisions that were made and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The complaint subcommittee reported that the judge denied collecting art from or by the accused and that the peace bond was not pre-arranged as a result of the judge collecting art from or by the accused. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-039/00

The complainant was involved in a Small Claims Court motion trial and wrote to the Judicial Council with respect "to the lack of justice" he received from the judge. The complainant alleged that the judge was "loud, rude and racist". The complaint subcommittee ordered and reviewed a copy of the audiotape of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of judicial misconduct on the part of the judge and nothing in the audiotape indicated that the judge was "loud, rude or racist", as the complainant had alleged. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-040/00

The complainant was involved in a family court matter. The complainant wrote a long letter to the Judicial Council detailing various orders of the judge that she was unhappy with ranging from the ordering of costs, to support, to access. The complaint subcommittee recommended that the complaint be dismissed, as there was no allegation of any judicial impropriety in the complaint. The complaint subcommittee noted that if the complainant was dissatisfied with the judgement of the court, she had the remedy of appealing the decisions that were made and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-041/00

The complainant was in court regarding his ex-wife's application "to move [their] children to Ontario" from British Columbia and alleged that the judge he was complaining about was involved, as a family friend, in counselling and assisting the complainant's former spouse "with

respect to legal matters concerning [their] divorce". The complainant further alleged that the judge "may have advised [the complainant's former wife] to use her maiden name in an attempt to disguise [her] identity" and "may have assisted in preparing affidavits, may have given my former wife legal advice, and actively intervened to prevent me from communicating, through a solicitor, with my ex-wife and my children." The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge's response fully addressed all issues complained of and the complaint subcommittee was satisfied, based on the judge's response, that there was no judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-042/00

The complainant was involved in a Small Claims Court matter. The complainant alleged that the judge treated her "unfairly". The complainant further alleged that the judge did not listen to her and that the judge made her feel that her "presence [in court] wasn't important". The complaint subcommittee asked for and reviewed a response to the complaint from the judge. In response, the judge admitted having no recollection of this motion or the parties to the motion and outlined what would normally be the procedure in a default hearing. The response further stated that the judge could not imagine that the opportunity to provide input would be denied to any party. The complaint subcommittee further reported that the judge regretted that the complainant felt "unimportant" and felt this would not have happened. The complaint subcommittee recommended

that the complaint be dismissed as the judge's response fully addressed all issues complained of and the complaint subcommittee was satisfied, based on the judge's response, that there was no judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-043/00

The complainant was involved in a marital dispute and was charged with common assault and mischief. The complainant alleged that the trial judge was biased and made inappropriate rulings throughout the trial. The complainant further alleged that on the sentencing date the judge stated, "This is a wealthy lawyer trying to force his wife on welfare". The complaint subcommittee ordered and reviewed a copy of the transcript and audiotape of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed because the audiotape did not disclose any inappropriate comment by the judge and the judge's response indicated that he had no recollection of making any such remark. The judge noted that he was not anxious to ruin the complainant's professional life and/or to cripple his ability to support his wife and children and, as a result, he granted a conditional discharge. The complaint subcommittee was of the view that if the complainant was dissatisfied with any inappropriate rulings or perception of bias, he had the remedy of appealing the decisions that were made and, without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 06-044/00 & 06-045/00

The complainants were partners in a law firm that was contracted to provide legal services to a Children's Aid Society (CAS). The complainants alleged that two judges (Judges "A" and "B") who regularly sat on family law cases when members of their law firm represented the CAS called a meeting with the Executive Director of the Children's Aid Society and made inappropriate comments to him concerning the quality of legal representation being provided by the complainants' law firm. The complainants maintained that shortly after the meeting with the judges, the Executive Director of the CAS terminated the contract it had signed with their law firm for the provision of legal services. The complainants allege that the conduct of the judges led directly or indirectly to the termination of their retainer with the CAS. Specifically, the complainants alleged that the judges called their (former) client and asked its Executive Director to attend a meeting in chambers without notice to any of the complainants or anyone at their law firm. The complainants alleged that the purpose of the meeting was to discuss cases before the court and for the purpose of discussing, directly or indirectly, the professional services provided by their law firm to the CAS. The complainants further alleged that, during the meeting, the judges' conduct in proffering statements about the legal services provided by the law firm, which they intended to be acted upon by the CAS, was not only inappropriate but constituted a clear departure from accepted standards of judicial conduct. The complainants further stated that the comments allegedly made by these judges reflected a pattern of "gratuitous insults" levelled towards lawyers of their law firm since 1993.

The complainants advised that, after they found out about the meeting in chambers, their law firm brought a motion before Justice "A" requesting that he recuse himself from hearing any child protection matters where the complainants' law firm acted as counsel and that Justice "A" refused to do so. The complainants also allege that Justice "A" "inordinately delayed approval" of a transcript of this last court appearance, knowing that the complainants intended to use it to make a complaint about him to the Judicial Council.

The complaint subcommittee asked for a response to the allegations of the complainants from both judges involved. The complaint subcommittee also retained the services of a private investigator to interview the employees of the CAS who were present at the meeting.

In his response, Judge "A" advised that he and the other judges in his court location had a longstanding concern over the apparent lack of preparation and lack of familiarity with issues required to be addressed by the court in the proceedings in which the CAS was involved. It was the view of Justice "A" that the interests of the parties involved in those proceedings and, more importantly, the interests of justice, were not being served. Justice "A" advised that he had mentioned his concerns to the former lead counsel from the law firm in question on more than one occasion and had been assured by him that he would take appropriate steps to ensure that counsel from his law firm were prepared to represent the interests of the CAS in a responsible and professional manner. Justice "A" also advised that he had been invited to attend the meeting, which had been arranged by a third party. He advised that he did not call the meeting, initiate

the meeting nor participate in any manner in arranging for it to be scheduled. Justice "A" further advised that he was aware that the Executive Director of the CAS would be present at the meeting, but he did not know that no one from the complainants' law firm had been invited to be present. Justice "A" also stated that he did not know who else would be at the meeting besides other members of the judiciary.

Justice "A" stated that, at the meeting, the Executive Director of the CAS asked the members of the judiciary present their opinion with respect to the quality of representation the CAS had received in the matters over which they presided. Justice "A" stated that he expressed his opinion in a frank and forthright manner, identifying lawyers who he felt properly represented the interests of the CAS in matters over which he had presided. Justice "A" further stated that his comments to the Executive Director of the CAS were of the same quality and character that had been made directly, in open court and in private meetings, to members of the law firm when he felt their level of performance warranted comment and he denied ever uttering insulting comments about any member of the law firm to anyone, gratuitously or otherwise. Justice "A" also advised that he did not intend his remarks to be considered within the context of whether or not the CAS would continue or terminate its relationship with the law firm. He advised that he did not know, for that matter, that the CAS was even considering replacing the law firm that had been retained.

With respect to the matter of the motion brought by the law firm to have Justice "A" recuse himself from presiding over future matters where members of the law firm might appear on behalf of the CAS, Justice "A" denied any attempt on his part to delay the approval of transcripts of his oral decision on the motion nor did he interfere in any way in an attempt to prevent the law firm from seeking appellate review of his dismissal.

In her response to this complaint, Justice "B" advised that she suggested to her local administrative judge (LAJ) the idea of inviting the Executive Director of the CAS to an informal meeting to discuss scheduling issues relating to the CAS as an institutional user of the court and such a meeting was arranged with the LAJ's approval. Justice "B" advised that the meeting was not called to discuss cases before the court or to discuss, directly or indirectly, the professional services provided by the complainants' law firm to the CAS. Justice "B" advised that she asked a trial co-ordinator to set up the meeting with the Executive Director and the judges who preside over child protection matters and she further advised that she did not intend or attempt to exclude participation by either in-house counsel for the CAS or the complainants' law firm and did not give any thought as to whom, if anyone, the Executive Director might bring with him to the meeting. Justice "B" advised that she did not make any comments relating to the legal services provided by the law firm and advised that Justice "A's" comments about some members of the complainants' law firm were both critical and complimentary.

The Judicial Council retained a private investigator who interviewed the Executive Director of the CAS as well as the other employees of the CAS who were in attendance at the meeting. The Executive Director advised that the meeting was held on August 3rd and was not held in

Chambers, as alleged by the complainant, but in a conference room in the courthouse. According to the investigator's report, the other two CAS staff members who had been present corroborated the Executive Director's recollections of what was discussed at the meeting. The Executive Director advised the investigator that the problems with counsel that were raised at the August 3rd meeting had been building for several months and that comments made at that meeting were not new and only reinforced what the CAS already knew. The Executive Director advised the investigator that the comments made did not result in the dismissal of the law firm and that the Society was already preparing for new representation due to consistently poor performance by the law firm at the time of his meeting with the judges and trial co-ordinator. The Executive Director advised that the authority to hire or dismiss counsel is made by the Board of Directors of the Society, which has thirteen members. The Executive Director of the CAS further stated that it was his opinion that comments made were motivated by the concern of the judges for the welfare of the children under care.

The investigator also interviewed the other members of the CAS who attended the meeting. The Director of Family Services advised that he felt the purpose of the meeting of August 3rd was to make improvements to the system and he corroborated the events as reported by the Executive Director. The Director of Intake and After Hours told the investigator that she felt that the meeting dealt with on-going problems of court case preparedness, adjournments and general concerns for the children at risk and that it was positive feedback to assist the agency in future hearings before the court. The complaint sub-

committee recommended that the complaint be dismissed because although there is acknowledgement that Justice "A" expressed his opinion, when asked by the Executive Director of the local CAS, with respect to the quality of representation they were receiving from the complainants' law firm, the context in which the opinion was expressed did not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-046/00

The complainant, who is a police officer, was involved in a trial in which he alleged that his former spouse had assaulted their six-year-old son. The complainant alleged that the trial judge was biased, misapprehended the evidence and had no basis for certain findings of fact, particularly in relation to the complainant's role in the investigation and the charge of assault against his former spouse. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no evidence of judicial misconduct on the part of the judge and nothing in the transcript supported the complainant's allegations. The complaint subcommittee noted that the judge had a right, in his reasons for dismissal, to state the evidence as he saw it. If errors in law were committed by the judge in the apprehension of facts or if the judge demonstrated bias (and the OJC made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 06-047/00 & 06-048/00

Two complainants wrote to the Judicial Council with respect to the appearance of two judges from two different provincial courts (Manitoba and Ontario), who appeared on a program about divorce and custody on the Women's Television Network. The complainants alleged that the television program took the view that fathers are incapable, in most cases, of being good custodial parents after divorce and that the judges agreed with this view. The complainants alleged that in the television program the judges "indicated their personal biases, in direct contradiction to the impartiality we [the public] expect from the Courts". The complainants further alleged that the judges were of the view that "fathers are not involved with their children and that they have not been 'good fathers' prior to the divorce...that custody should never be given to these men, and especially to a 'travelling salesman'."

The complaint subcommittee asked for and reviewed a response to the complaint from the judge from Ontario (over whom it had jurisdiction) and viewed a copy of the videotape of the television program provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the judge's response was full and fair and the videotape offered no support for the allegations of bias. The judge's response noted that the host of the television show stated that some people may think the law is skewed in favour of women when it comes to custody of children and both judges re-iterated that the best interests of the children are paramount and that some fathers, after separation, should be encouraged to stay involved in the lives of their children (and in some cases, "get involved"). The complaint subcommittee also noted that on the videotape the judge complained against stated, with respect to the issue of custody, that generally one tries to keep the status quo for the best interests of the children. The judge then gave an example to focus on that objective as follows: "Look at the situation before the separation. If the father was a travelling salesman and the mother a stay-athome mother, I am not sure why at separation one would change that and then give custody to the father, and access to the mother. Generally you try to keep things – because it is so chaotic when people separate - you try to keep things as much the same as possible." The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-049/00

The complainant, who was represented by counsel, attended with several of his co-accused before a judge for a pre-trial hearing. The complainant wrote to the Judicial Council, complaining that the judge had forced the defendants onto trial before they had received full disclosure of the Crown's case. With his complaint, the complainant included part of a letter that had been sent to him by his lawyer. The complaint subcommittee wrote to the complainant requesting that he forward the rest of the letter from his lawyer and to also provide the Judicial Council with further information to assist it in its investigation. The complaint subcommittee reported that it had received no further information from the complainant. The complaint subcommittee recommended that the complaint be dismissed because, in its view, there was no evidence to support the complainant's allegation of bias. The complaint subcommittee further reported that, in its view, there was no

judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-050/00

The complainant was before the court on criminal charges. He stated in his letter that he was "unfit to stand trial" but that the judge proceeded in any event and also made disparaging remarks about the complainant's "grandiose delusions of stardom". The complaint subcommittee asked for a response to the complaint from the judge but she replied that, without a transcript, she would be unable to remember the particular case or accused. The complaint subcommittee ordered a copy of the transcript of the evidence in this matter but were advised that the court reporter who monitored the trial had died and the reporter who had been assigned to cover her transcript orders could not locate the tape for the court day in question and, as a result, no transcript could be produced. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in deciding that the complainant was fit to stand trial. Insofar as the alleged comments attributed to the judge by the complainant, the complaint subcommittee was of the view that even if the comments were made they would not warrant the intervention of the Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-051/00

The complainant was in court charged with criminal harassment. The complainant alleged that he had been "victimized by the blatant misconduct" of the judge and that the judge was biased and prejudiced. The complainant further alleged that the judge "suppressed evidence" and used a typographical error to "wrongfully convict" the complainant. The complaint subcommittee asked for and reviewed a response from the judge who ordered the transcript of the proceedings on the date in question together with the subsequent sentencing proceedings. In her response, the judge noted that all of her dealings with the complainant were in open court and on the record and that the transcripts would speak for themselves as to the fairness of the proceedings. The complaint subcommittee reviewed the transcripts of evidence when they were received and recommended that the complaint be dismissed, as it was its view that the transcripts offered no support for the complainant's allegations of bias, prejudice or misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-052/00

The complainant was in court charged with three counts of uttering threats and one count of failing to comply with a court order. The complainant alleged that the judge overstepped his authority and was not fit to administer justice. The complainant further alleged that the judge found him

guilty of "threat to cause bodily harm" when the charge was "threat to cause death". The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in this case and that the decisions made were within the judge's jurisdiction. If the judge committed errors in law (and the OJC made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee noted that the charge of "threat to cause bodily harm" is an included offence in the charge of "threat to cause death". The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-053/00

The complainant, who was not represented by counsel, was in court charged with failing to comply with a court order. The complainant alleged that the charge of failing to comply was withdrawn previously in court, that the judge was aware of this fact and was "covering this up" when the judge proceeded to hear the case. The complainant further alleged that the judge suppressed evidence by not allowing attendance records in court and that a transcript was totally fictitious. The complaint subcommittee reviewed a copy of the transcript provided by the complainant and ordered and reviewed a copy of the audiotape of the evidence. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no

judicial misconduct evident in the exercise of the judge's discretion in hearing the case. The complaint subcommittee further noted that a comparison of the transcript and the audiotape of the day in question showed that the transcript is accurate. If the judge committed errors in law (and the OJC made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 06-055/00

The complainant was in court on a matrimonial matter and stated that she was generally unhappy with the way the judge conducted her case. The complainant alleged that the judge allowed the other party to the proceedings to engage in several yelling matches in the courtroom. The complainant further alleged that the judge allowed the opposing party to swing his fists at another person in the waiting room outside court while a baby was present. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as the judge's response constituted a full answer. The complaint subcommittee reported that the judge did recall the individual being loud and difficult in the courtroom, which the judge stated was not uncommon in matrimonial matters, and spoke to the security officer regarding this matter. The judge added that the security officer had spoken to the individual about his poor behaviour in the courtroom and he apologized. The judge further noted that she was

unaware of what had transpired in the waiting room but that no similar activity would be tolerated in the courtroom and the matter should have been brought to the attention of court security by the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 07-001/01

The complainant appeared before the Court for a preliminary hearing on a number of charges. The complainant alleged that, during the course of the preliminary hearing, the secretary to one of the investigating police detectives had come into the courtroom and sat directly behind one of his co-accused in order to assist a witness on the stand to identify the said co-accused. The complainant alleged that the judge was involved in this "miscarriage of justice" because he must have known who the secretary was and what she was doing by coming into the courtroom and sitting where she did. The complainant also alleged that the judge "unduly interfered" with his lawyer's attempt to cross-examine one of the Crown's witnesses and thereby interfered with his defence. The complaint subcommittee reviewed the transcript of the preliminary hearing and recommended that the complaint be dismissed as the complainant had legal representation throughout his preliminary hearing and he had raised no legal objection to either the secretary coming into the court, if such an incident occurred, or the alleged "interference" in his cross-examination of a crown witness. The complaint subcommittee also recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and if errors in law were committed by the judge during the preliminary hearing (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

#### CASE NO. 07-002/01

The complainant alleged that the judge who was sitting on his family court matters had a conflict of interest and was biased as he was allegedly acquainted with the complainant's former spouse and had previously advised her on matters of law and advised her on how to proceed and what to say in an affidavit. He also alleged that the judge and his (the complainant's) former spouse had a common employer and were "well known" to each other. The complaint subcommittee recommended that the complaint be dismissed as abandoned. The complaint subcommittee advised that it had sent two letters to the complainant requesting further information - one letter was sent through regular post and the second was sent by priority post, which required a signature. The complaint subcommittee advised that both letters were returned to Council. marked "Moved/Unknown/Return to Sender". The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed, subject to it being re-opened if the complainant provides the requested information.

#### CASE NO. 07-003/01

The complainant was in court charged with intimidation and uttering threats. The complaint subcommittee reported that the complainant's

main complaint was against his lawyer. The complainant had arrived late for his court appearance and the complainant's lawyer entered a plea of "not guilty" and requested disclosure. The complainant became upset with the amount of time it took to obtain disclosure, fired his lawyer for failing to provide disclosure and proceeded to represent himself in the matter. The complainant alleged that the judge directed the complainant to sign a "peace bond" contrary to the complainant's wishes. The complaint subcommittee reviewed a copy of the transcript of the evidence provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that the transcript offered no evidence of judicial misconduct on the part of the judge. The complaint subcommittee noted that the transcript revealed that the complainant voluntarily signed a peace bond after speaking to duty counsel and to his counsel (who had been re-hired by the complainant) and stated he understood it. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed. .

## CASE NO. 07-004/01

The complainant is the president of an organization advocating the position that children should have equal access to both parents after separation or divorce. The complaint subcommittee reported that his main complaint was about the recommendations of the "Jordan Heikamp Inquest" and the reaction of the Catholic Children's Aid Society. The complaint subcommittee further reported that the judge complained about was not associated with the inquest but with the previous criminal proceedings against the baby's mother and the CAS worker responsible for the

baby's care. The complainant alleged that the judge should be "removed from dispensing justice, if not charged with murder, because she has proven to be very gender prejudiced in favour of women, thus, unfit to be in that position". The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no specific allegation of judicial misconduct in the complaint, only unsubstantiated generalizations. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 07-005/01

The complainant was the alleged victim of a domestic assault and had several complaints about the trial and the conduct of the police. Her main allegation against the judge who presided at the trial was that he had a conflict of interest in that he knew the defendant (her ex-husband) but continued to preside in any event. The complainant also alleged that the trial judge allowed defence counsel to "badger her" during her testimony, would not permit her to give evidence about her ex-husband's violent past, would not permit the Crown witnesses to testify, was obviously distracted during the trial as he'd stated at the start of it that he was waiting for a phone call from his wife's doctor and would have to leave when the call came, belittled the criminal charges that were laid when he ordered the parties to enter into a peace bond, refused to prohibit her ex-husband (a retired police officer) from possessing weapons and further alleged that this was a "bogus trial" in that everyone involved only wanted to protect her ex-husband. The complaint subcommittee asked for and reviewed a response to the complaint from the judge, particularly in

regard to the allegation that he knew the accused. In his response, the judge stated that he'd been brought in to do the trial from out-of-town specifically because he did not know any of the parties involved and had no ties to the community. The judge further refuted the complainant's several allegations as groundless and/or as a result of her lack of knowledge about criminal proceedings and the rules of evidence. The judge further denied that he was distracted while waiting for his wife's doctor to call and noted that he'd advised the court that he would take a recess if and when the call came in, not adjourn the trial as the complainant had alleged. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in the decisions he made during the trial and they were satisfied that the judge had no conflict of interest and did not know the accused. If the judge committed errors in law during the course of the trial (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 07-007/01

The complainant's son was involved in a custody dispute with his ex-wife in regard to the child of their marriage, the complainant's grandson. The complainant's first letter to the Judicial Council complained that the judge was taking too long to render the decision in the matter. Another letter shortly followed that letter from the complainant

advising that the parties had received the judge's decision. The complainant then alleged that the judge, who awarded interim custody to the maternal grandparents of the child, was incompetent and biased against her son, the father of the child, as the judge had not awarded custody to him and/or to the paternal grandparents (the complainant and her husband). The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in awarding custody to the maternal grandparents and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-008/01

The complainant was charged with criminal harassment and stated that, after his trial and after being found "not guilty", the presiding judge sentenced him to a "one year common bound (sic)". He also complained that he was not allowed to testify on his own behalf. The complaint subcommittee reported that the complainant was represented by counsel throughout the proceeding. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. After reviewing same, the complaint subcommittee reported that, at the end of the Crown's case, the judge exercised her common law jurisdiction and required the complainant/accused to enter into a peace bond for a year with one condition

and that condition was to stay away from the person he had supposedly criminally harassed. The judge also found the complainant/accused not guilty and dismissed the charge, noting there were insufficient grounds to make out a charge of criminal harassment. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in exercising her common law jurisdiction and they further noted that the complainant's counsel chose not to call any evidence at the end of the Crown's case. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-010/01

The complainant was before the courts for a preliminary hearing. The complainant alleged that the judge acted improperly in "forcing" him on even though the lawyer he had retained was not present and the judge would not permit cross-examination of a witness regarding his prior criminal activity. The complainant further alleged that the audiotapes and transcripts of his preliminary hearing were not accurate. The complaint subcommittee recommended that the complaint be dismissed as the complainant was represented by counsel during the preliminary hearing (although the lawyer who attended was not the lawyer the complainant had retained but a partner in his law firm). Further, it was the complaint subcommittee's view that the complaints

regarding the audiotapes and transcripts were not allegations of judicial misconduct and the Judicial Council had no jurisdiction in regard to them. The complaint subcommittee further noted that, in its view, there was no judicial misconduct evident in the exercise of the judge's discretion in the decisions that he made during the preliminary hearing and if errors in law were committed by the judge during the course of the preliminary hearing (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-011/01

The complainant alleged, "the judicial system [had] failed [him] totally. [He had] been arrested, thrown in jail for several weeks and put through constant inconvenience for a year now" but had "committed no crime". The complainant further alleged that his defence counsel was completely incompetent and the Crown Attorney's Office was determined to railroad him into a conviction. His complaint against the judge consisted of a statement that the judge had apparently been named "one of the three worst judges in the city" in a newspaper story that appeared before the complainant had gone to trial and that the judge had a reputation for being extremely hard on sentence, and supposedly believed everything that the prosecution and their witnesses alleged against the accused who appeared before him. The complainant also alleged that the lawyer of another accused person in the court the morning he was to have had his trial, "walked out" when

he found out who the judge was and that the accused person, who was then unrepresented, was "completely terrified". The complainant alleged that because of this judge's "terrible reputation" he was forced to enter into a plea bargain in exchange for a conditional discharge in order to avoid having to be tried before this judge. The complaint subcommittee recommended that the complaint be dismissed, as there was no specific allegation of any misconduct by the judge in question with respect to this particular complainant. The complaint subcommittee noted that the judge could not be held accountable for irresponsible statements made in the news media or the quality of representation provided to the complainant by legal counsel. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-012/01

The complainant had been convicted by a Justice of the Peace under the Highway Traffic Act. The complainant appealed that decision to a judge of the Ontario Court of Justice who upheld the decision of the Justice of the Peace and the complainant objected to that decision. The complaint subcommittee recommended that the complaint be dismissed, as there was no allegation of any judicial impropriety against the Ontario Court Justice in the complaint. The complaint subcommittee noted that the complainant did not like the fact that the judge agreed with the Justice of the Peace but that fact, in and of itself, does not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-013/01

The complainant was involved in a dispute over the custody of a child. The complainant alleged discrimination because the judge gave "full custody to a women (sic) who broke not only a joint custody order but also his own order". The complaint subcommittee recommended that the complaint be dismissed because the judge made a decision about custody and access and there was no evidence of any bias against the complainant. The complaint subcommittee also noted that the complainant may appeal the decision. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 07-014/01

The complainant, who was unrepresented, was a payor in an enforcement proceeding against him. The complainant alleged that the presiding judge breached the principles of fundamental justice by making an order against him in the absence of a hearing and then tried to cover up the fact that she had done so. The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the transcript revealed that the judge did not do what the complainant had alleged. The complaint subcommittee reported that the judge applied the relevant law, attempted to explain the relevant law to the complainant, made an Interim Order in accordance with the law and the evidence before her and, in its view, there was no judicial misconduct on the part of the judge on either of the dates the complainant attended. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are,

without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-016/01

The complainant advised that the authorities at the jail in which he was incarcerated would not permit him to take his copy of The "Criminal Code" with him to court. He further complained that during the hearing of a motion he was not given the opportunity to view a copy of The "Criminal Code" and that this prevented him from making full answer and defence to the charges which had been laid against him. The complaint subcommittee recommended that the complaint be dismissed because there was no specific complaint of misconduct made against the judge who heard the motion and, further, because the judge was not responsible for the actions of the jail staff or the Crown or court staff. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 07-017/01

The complainant claimed that he had not received transcripts that he had ordered and alleged that this was due to interference by the judge and that the judge had been involved in a "behind the scenes discussion with a female clerk" and had thus engaged "in a conspiracy to obstruct the course of justice". The complainant also made several allegations about rulings made by the judge throughout the course of the trial and various procedural matters. The complaint subcommittee recommended that the complaint

be dismissed as there was no objective evidence to support the complainant's allegations of a "conspiracy to obstruct the course of justice" and further that, in its view, there was no judicial misconduct evident in the exercise of the judge's discretion in the conduct of the hearing and the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-018/01

The complainant was a lawyer who had appeared before the judge complained against for several years. The complainant advised that, on this particular occasion, he appeared before the judge on behalf of a client. The complainant alleged that during the course of a pre-trial conference, the judge made inappropriate remarks concerning the three parties before him, and specifically the complainant alleged that the judge made anti-Semitic remarks. The complaint subcommittee asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed as they reported that, in his response, the judge apologized for any remarks that he'd made which could have been or were considered offensive by the parties. The complaint subcommittee further reported that the judge advised that he had not intended any of his comments to be disrespectful in any way. The review panel wanted further information before it made any

decision on the matter and the complaint subcommittee was instructed to ask the complainant to advise what the issues under discussion were at the pre-trial and to provide a copy of the claim and the defence filed in court in the matter. The complainant provided the information as requested and, upon review of the additional material, the complaint subcommittee again recommended that the complaint be dismissed. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 07-019/01

The complainant attended for a pre-trial hearing in a Small Claims Court matter. She appeared as her own counsel and advised that the defendant was represented by a "law clerk". The complainant alleged that the judge who was conducting the pre-trial hearing, "acted in a most unprofessional manner, screaming, yelling, raising his voice, being sarcastic, rude and threatening." She also alleged that the judge would not permit her to talk and that he "threatened to get the police to escort me out". As no transcript was available for a pre-trial hearing, the complaint subcommittee asked for and received a response to this complaint from the judge in question. The judge denied the allegations contained in the complainant's letter, advising the complaint subcommittee that the complainant was "rude, demanding and disrespectful to the Bench". He advised that she frequently interrupted him and tried to monopolize the pre-trial hearing. He further advised that, although he had to be firm with her, he was "at all times fair" and denied the misconduct that she alleged. The judge also suggested that the complaint subcommittee contact the lawyer who had attended the pre-trial on behalf of the defen-

dant. The complaint subcommittee wrote to the lawyer and asked for her recollections of the pretrial hearing, providing her with a copy of the complainant's letter and the response from the judge. After reviewing the letter received from the defendant's lawyer, the complaint subcommittee recommended to the review panel that the complaint be dismissed as this independent third party present at the pre-trial confirmed that the judge was not rude or threatening and did not prevent the complainant from speaking. The lawyer confirmed the judge's recollection of the hearing, advising that the complainant was rude and aggressive towards the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-020/01

The complainant reported that, while sitting in a police squad car outside a courthouse where he was scheduled to appear on a charge of assault, he witnessed the brother of the man he was charged with assaulting "sneaking" from the back of the courthouse "in unusual clothing for himself to wear in [a] small town" at approximately 9:30 a.m. The complainant alleged that, since he was convicted of the assault, the judge who convicted him must have been bribed by the brother of the victim who the complainant had seen walking around from the back of the courthouse prior to the start of court. The complaint subcommittee wrote to the complainant, asking for any evidence that this alleged incident took place, other than his claim that he witnessed the victim's brother walking around to the front of the courthouse from the back of it prior to court commencing. The complainant responded by

repeating his allegation and including further information that the O.P.P. officer who drove him to court is also one of the victim's brother's "drinking friends". The complaint subcommittee recommended that the complaint be dismissed, as it received no evidence to support the complainant's speculation that the trial judge must have been bribed in order to convict him. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 07-022/01

The complainant alleged that the judge before whom he'd previously appeared on a civil action "changed" his order, refused to issue a contempt of court order against the defendant in the matter, refused to dismiss a motion brought by the defendants and refused to bar the defendant's representative from appearing in court and, by these decisions and actions, showed his clear bias in favour of the defendant. The complaint subcommittee members reviewed the court file in order to determine whether or not there was any substance to any of the complainant's allegations and, after its review of the court file, recommended that the complaint be dismissed. The complaint subcommittee members reported that, in its view, there was no evidence of bias or improper use of authority as alleged by the complainant. The complaint subcommittee further recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-029/01

The complainant was criminally charged and appeared in court on a charge of threatening bodily harm. The complainant alleges that, after entering his plea, the presiding judge said "Not Guilty" at the "top of her lungs" and admitted evidence at trial that the complainant maintained had been obtained in breach of his Charter rights. The complaint subcommittee reviewed the transcript that had been provided by the complainant and recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in admitting the evidence that the complainant objected to being admitted and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-031/01

The complainant was involved in a Children's Aid Society proceeding and a parallel custody/access dispute. The specific nature of his complaint against the judge was not outlined other than the

fact that the complainant expressed dissatisfaction that his children were "taken away" from him several years ago by Children's Aid and he has never been told exactly why. The complaint subcommittee recommended that the complaint be dismissed as there was no specific allegation of any judicial impropriety in the complaint and the complainant appeared to be unsatisfied with the entire process and the end result. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## CASE NO. 07-032/01

The complainant was involved in a custody/access dispute in family court. She appeared as the respondent on a motion for support made by the paternal grandmother/custodial applicant of her child. The complainant alleged that the judge on the grandmother's motion before the court exhibited bias against her by his alleged statements about her in his reasons for the ruling he made after the motion was heard. The complainant alleged that the judge made "derogatory and slanderous comments" about her and accusations about her as a person based on "unsupported and entirely false allegations presented by the opposing lawyer". The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence on the motion. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario

Judicial Council. The complaint subcommittee further reported that, in its view, any statements made by the motions judge relating to the complainant were a justified criticism of the nature of the evidence presented in her affidavit that had been submitted to the court. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-033/01

The complainant was involved in a Children's Aid Society proceeding with a parallel custody/access dispute. The complaint subcommittee reported that the complainant alleged that the judge who heard a motion in this matter based his decision on "perjured" evidence contained in an affidavit and, further, that the judge knew that "perjury" had been committed and did nothing about it. The complaint subcommittee reviewed the court file that had been provided by the complainant. The complaint subcommittee recommended that the complaint be dismissed, as it was its view that there was no evidence that any decision of the motions judge had been based on "perjured" evidence or that the motions judge was aware that any perjury may have taken place. The complaint subcommittee further reported that, given the other allegations against the opposing parties and counsel, the complainant appears to be unhappy with the ruling on the motion and that there had been no misconduct on the part of the judge. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

## HEARINGS

## 11. Hearings

### CASE NO. 04-017/98

The complainant was a lawyer representing an accused person who was charged with two counts of threatening bodily harm. The complainant alleged that, after the commencement of the trial at which all witnesses were present and without any warning whatsoever, the trial judge said he did not have time to hear evidence and sent the case back for the third time to Assignment Court for a new trial date. The complainant further alleged that the judge said he did not want to have anything to do with the complainant's lawyer due to past dealings the judge had with him. The complaint subcommittee ordered and reviewed a copy of the transcript of evidence and asked for and reviewed a response from the judge. The complaint subcommittee referred the complaint to the Judicial Council with a recommendation that it hold a hearing. After consideration of the material, the members of the Review Panel rejected the recommendation that a hearing be held and decided that it would be more appropriate to refer the complaint to the Chief Justice, provided the judge acknowledged there was some merit to the complaint and that his conduct was not appropriate in the circumstances as is required by the OJC's procedures. The Judicial Council wrote to the judge several times requesting that he acknowledge that there was some merit to the complaint and that his conduct was inappropriate in order to have the complaint resolved by referral to the Chief Justice. Such a response was never received from the judge and the members of the complaint subcommittee and review panel, after consideration of all the material and the various letters which had been sent to and received from the judge since the original decision to refer the matter to the Chief Justice decided that the complaint should go to a hearing as it was obvious that the judge did not accept that there was anything inappropriate in his conduct towards the complainant and his counsel. A Notice of Hearing was issued and a hearing was held on February 11, 2002. As the criteria for a private hearing were not met, the hearing was public.

At the conclusion of the hearing, the hearing panel determined that the judge's conduct, while constituting an error in judgment, fell short of constituting judicial misconduct for a number of reasons, which they enumerated. The hearing panel therefore dismissed the complaint.

A copy of the complete text of the "Reasons for Decision" in this matter may be found at Appendix "E".

## HEARINGS

### CASE NO. 05-030/99

The Judicial Council received a letter from a Regional Senior Justice who felt "obliged to lodge a complaint with the Ontario Judicial Council". The letter alleged that a judge had "used his computer to visit pornographic sites via the internet", "used the offices and computers of other justices...to visit pornographic sites on the internet", and "left visible images upon his computer which a member of their court staff was exposed to". The complainant subcommittee reviewed an unsolicited response to the complaint from the judge. The complaint subcommittee also retained a private investigator to interview witnesses and conduct a forensic examination of the computer hard drives and other equipment to which the judge had access. The complaint subcommittee referred the complaint to the members of the review panel who, after reviewing the material gathered by the complaint subcommittee, decided that the matter should go to a hearing and that a Notice of Hearing should be prepared.

Pursuant to s. 51.4(18) and 51.6 of the *Courts of Justice Act*, Notice of Hearing was issued and a hearing was held on April 20, 2001. The hearing panel was comprised as follows: -

# THE HONOURABLE R. ROY MCMURTRY Chief Justice of Ontario PAUL HAMMOND

At the outset of the hearing, an application in writing was made by the judge under s. 51.6(7) of the *Courts of Justice Act*, for an order by the hearing panel that the hearing be held in private and that there be a prohibition of the publication of any information that might identify the judge.

The hearing panel determined that in accordance with the Courts of Justice Act and criteria established by the Ontario Judicial Council pursuant thereto, an order was made that the hearing be held in private and that the judge's name not be disclosed or made public. After hearing submissions by counsel for both the OJC and the subject judge and considering all of the material filed with them, the hearing panel was of the view that the judge's conduct was "inappropriate" and "in other circumstances could amount to misconduct". The hearing panel also noted that the judge's conduct had "embarrassed the judiciary and caused the judge a degree of public humiliation". However, the hearing panel stated that, "in these particular circumstances...we do not find judicial misconduct in the meaning of that term in the context of the Courts of Justice Act". The hearing panel therefore dismissed the complaint.

**\* \* \*** 

## ONTARIO JUDICIAL COUNCIL

2001-2002 Annual Report

## **APPENDICES**

APPENDIX "A" Do You Have A Complaint?

APPENDIX "B" Procedures Document

APPENDIX "C" Education Plan

APPENDIX "D" Legislation

APPENDIX "E" Reasons for Decision



## APPENDIX-A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

## ONTARIO JUDICIAL COUNCIL - DO YOU HAVE A COMPLAINT?

The information in this brochure deals with complaints of misconduct against a Provincial Judge or a Master.

## Provincial Judges in Ontario - Who are they?

In Ontario, most criminal and family law cases are heard by one of the many judges appointed by the province to ensure that justice is done. Provincial Judges, who hear thousands of cases every year, practised law for at least ten years before becoming judges.

wrong conclusion, they may request a review or an appeal of the judge's decision in a higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

## Ontario's Justice System:

In Ontario, as in the rest of Canada, we have an adversarial justice system. In other words, when there is a conflict, both parties have the opportunity to present their version of the facts and evidence to a judge in a courtroom. Our judges have the difficult but vital job of deciding the outcome of a case based on the evidence they hear in court and their knowledge of the law.

For this type of justice system to work, judges **must** be free to make their decisions for the right reasons, without having to worry about the consequences of making one of the parties unhappy – whether that party is the government, a corporation, a private citizen or a citizens' group.

## Is a Judge's Decision Final?

The judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, placement of children with one parent or the other. Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge has reached the

## Professional Conduct of Judges

In Ontario, we expect high standards both in the delivery of justice and in the conduct of the judges who have the responsibility to make decisions. If you have a complaint about the conduct of a **Provincial Judge** or a **Master**, you may make a formal complaint to **The Ontario Judicial Council**.

Fortunately, judicial misconduct is unusual. Examples of judicial misconduct could include: gender or racial bias, having a conflict of interest with one of the parties or neglect of duty.

## The Role of the Ontario Judicial Council

The Ontario Judicial Council is an agency which was established by the Province of Ontario under the *Courts of Justice Act*. The Judicial Council serves many functions, but its main role is to investigate complaints of **misconduct** made about provincially-appointed judges. The Council is made up of judges, lawyers and community members. The Council does **not** have the power to interfere with or change a judge's decision on a case. Only an appeal court can change a judge's decision.

## APPENDIX-A

## ONTARIO JUDICIAL COUNCIL - DO YOU HAVE A COMPLAINT?

## Making a Complaint

If you have a complaint of misconduct about a Provincial Judge or a Master, you must state your complaint in a signed letter. The letter of complaint should include the date, time and place of the court hearing and as much detail as possible about why you feel there was misconduct. If your complaint involves an incident outside the courtroom, please provide as much information as you can, in writing, about what you feel was misconduct on the part of the judge.

## How are Complaints Processed?

When the Ontario Judicial Council receives your letter of complaint, the Council will write to you to let you know your letter has been received.

A subcommittee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, which includes two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

## Decisions of the Council

Judicial misconduct is taken seriously. It may result in penalties ranging from issuing a warning to the judge, to recommending that a judge be removed from office.

If the Ontario Judicial Council decides there has been misconduct by a judge, a public hearing may be held and the Council will determine appropriate disciplinary measures.

If after careful consideration, the Council decides there has been no judicial misconduct, your complaint will be dismissed and you will receive a letter outlining the reasons for the dismissal.

In all cases, you will be advised of any decision made by the Council.

## For Further Information

If you need any additional information or further assistance, in the greater Toronto area, please call 416-327-5672. If you are calling long distance, please dial the toll-free number: 1-800-806-5186. TTY/Teletypewriter users may call 1-800-695-1118, toll-free.

## Written complaints should be mailed or faxed to:

The Ontario Judicial Council P.O. Box 914 Adelaide Street Postal Station 31 Adelaide Street East Toronto, Ontario M5C 2K3

416-327-2339 (FAX)

## Just a reminder...

The Ontario Judicial Council may only investigate complaints about the **conduct** of provincially-appointed Judges or Masters. If you are unhappy with a judge's **decision** in court, please consult with a lawyer to determine your options for appeal.

Any complaint about the **conduct** of a federally-appointed judge should be directed to the Canadian Judicial Council in Ottawa.

**\* \* \*** 



## APPENDIX-B

ONTARIO JUDICIAL COUNCIL –
PROCEDURES DOCUMENT



OJC - PROCEDURES DOCUMENT - INDEX

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT

## **INDEX**

COMPLAINTS	
Generally	B-1
COMPLAINT SUBCOMMITTEES	
Composition	B-1
Administrative Procedures	B-1
Status Reports	B-1
Investigation	
Guidelines & Rules of procedure	
re: investigation of complaints	B-1
Agreement on how to proceed	B-2
Dismissal of Complaint	B-2
Conducting Investigation	B-2
Previous Complaints	B-2
Information to be obtained by Registrar	B-2
Transcripts, etc.	B-2
Response to Complaint	B-2
Generally	B-3
Advice and Assistance	B-3
Multiple Complaints	B-3
Interim Recommendation to Suspend or Reassign	B-3
Complaint against Chief Justice et al	
- Interim Recommendations	B-3
Criteria for Interim Recommendations	
to Suspend or Reassign	B-3
Information re: Interim Recommendation	B-4

## OJC – PROCEDURES DOCUMENT – INDEX

## Reports to Review Panels

	when investigation Complete	B-4
	Guidelines & Rules of Procedure re:	
	Reports to review panels	B-4
	Procedure to be Followed	B-4
	No Identifying Information	B-5
	Decision to be Unanimous	B-5
	Criteria for Decisions by Complaint Subcommittees:	
	a) to dismiss the complaint	B-5
	b) to refer to the Chief Justice	B-5
	c) to refer to mediation	B-5
	d) to recommend a hearing	B-6
	Recommendation re: hearing	B-6
	e) compensation	B-6
	Referring Complaint to Council	В-6
	Information to be Included	В-6
REVIE	W PANELS	
	Purpose	В-6
	Composition	
	When Review Panel Formed	
	Guidelines and Rules of Procedure	B-7
Ren	view of Complaint Subcommittee's Report	
	Review in Private	B-7
	Procedure on Review	
Ref	ferral of Complaint to a Review Panel	
	When Referred	B-8
	Power of Review Panel on Referral	B-8
	Guidelines and Rules of Procedure	B-8
	Guidelines re: Dispositions	
	a) ordering a hearing	B-8
	b) dismissing a complaint	
	c) referring a complaint to the Chief Justice	
	d) referring a complaint to mediation	
	-,	

## OJC - PROCEDURES DOCUMENT - INDEX

## REVIEW PANELS (cont'd)

REVIEW PANELS (com a)	
Notice of Decision	
Decision communicated	B-9
Administrative Procedures	B-9
HEARING PANELS	
Applicable Legislation	B-9
Composition	
Power	B-10
HEARINGS	
Communication by Members	
Parties to the Hearing	
Public or Private/All or Part	
Open or Closed Hearing – Criteria	
Revealing judge's name when Hearing was private - Criteria	B-11
When an order prohibiting publication of judge's name may be made, pending the disposition of	
a complaint – Criteria	B-13
New Complaint	B-13
PROCEDURAL CODE FOR HEARING	
Preamble	B-12
Interpretation	B-12
Presentation of Complaints	B-12
Notice of Hearing	B-12
Response	B-13
Disclosure	B-13
Pre-Hearing Conference	B-13
The Hearing	B-13
Pre-Hearing Rules	B-14
POST-HEARINGS	
Disposition at Hearing	



## OJC - PROCEDURES DOCUMENT - INDEX

Report to Attorney General	
Report	B-15
Identity Withheld	B-15
Judge not to be Identified	B-15
Order to Accommodate	
Order to Accommodate	B-15
Removal from Office	
Removal	B-15
Tabling of Recommendation	B-16
Order removing judge	B-16
Application	
COMPENSATION	
After Complaint Disposed Of	B-16
Public or Private	B-16
Recommendation	B-16
Where Complaint Dismissed After a Hearing	B-16
Disclosure of Name	B-16
Amount and Payment	B-17
CONFIDENTIALITY AND PROTECTION OF PRIVA	CY
Information to Public	B-17
Policy of Judicial Council	B-17
Complaint Subcommittee Investigation Private	B-17
Review Panel Deliberation Private	B-17
When Identity of Judge Revealed to Review Panel	B-17
Hearings may be Private	B-17
Judge's name not disclosed	B-17
Order prohibiting publication	B-18
Criteria established	B-18
Report to Attorney General	B-18
Judge not to be identified	B-18
Order not to disclose	B-18
Exception	B-18
Amendments to Freedom of Information	
and Protection of Privacy Act	B-18



## DO YOU HAVE A COMPLAINT

ACCOMMODATION OF DISABILITIES	
Application for Order	B-19
Duty of Judical Council	
Undue Hardship	B-19
Guidelines and Rules of Procedure	B-19
Opportunity of Participate	B-19
Order Binds the Crown	
Chair for Meeting	B-19
Chair entitled to Vote	B-19
Quorum for Meeting	B-19
Expert Assistance	B-19
Confidential Records	B-19
Accommodation Order after a Hearing	B-20
Rules of Procedure and Guidelines	B-20
Application in Writing	B-20
Accommodation Subcommittee	B-20
Report of Accommodation Subcommittee	B-20
Initial Consideration of Application and Report	B-20
Threshold Test for Qualification as Disability	B-21
Notification of Minister	B-21
Submissions on Undue Hardship	B-21
Time frame for Response	B-21
Meeting to Determine Order to Accommodate	B-21
Copy of Order	B-21
SPECIAL CONSIDERATIONS	
French-speaking complainants/judges	B-22
Complaints against Chief Justice et al	
Complaints against Small Claims Court judges	
Complaints against Masters	

## 

## OJC - PROCEDURES DOCUMENT - INDEX

## **ADMINISTRATIVE MATTERS**

Intake/Opening Complaint Files	B-24
Complaint Subcommittees	B-24
Review Panels	B-25
Meeting Materials	B-25
Notice of Decision – Notification of Parties	B-26
Closing Files	B-26

B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT

Please Note: All statutory references in this document, unless otherwise specifically noted are to the **Courts of Justice Act**, **R.S.O. 1990**, as amended.

### **COMPLAINTS**

#### **GENERALLY**

Any person may make a complaint to the Judicial Council alleging misconduct by a provincially-appointed judge. If an allegation of misconduct is made to a member of the Judicial Council it shall be treated as a complaint made to the Judicial Council. If an allegation of misconduct against a provincially-appointed judge is made to any other judge, or to the Attorney General, the recipient of the complaint shall provide the complainant with information about the Judicial Council and how a complaint is made and shall refer the person to the Judicial Council.

subs. 51.3(1), (2) and (3)

Once a complaint has been made to the Judicial Council, the Judicial Council has carriage of the matter.

subs. 51.3(4)

## COMPLAINT SUBCOMMITTEES

### COMPOSITION

Complaints received by the Judicial Council shall be reviewed by a complaint subcommittee of the Judicial Council which consists of a judge, other than the Chief Justice of the Ontario Court of Justice and a lay member of the OJC (the term "judge" includes a master when a master is the subject of a complaint). Eligible members shall serve on the complaint subcommittees on a rotating basis.

subs. 51.4(1) and (2)

#### ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by members of complaint subcommittees and members of review panels can be found at pages 24 - 26 of this document.

#### STATUS REPORTS

Each member of a complaint subcommittee is provided with regular status reports, in writing, of the outstanding files that have been assigned to them. These status reports are mailed to each complaint subcommittee member at the beginning of every month. Complaint subcommittee members endeavour to review the status of all files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

## Investigation

#### **GUIDELINES AND RULES OF PROCEDURE**

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

A complaint subcommittee shall follow the Judicial Council's guidelines and rules of procedures established for this purpose by the Judicial Council under subsection 51.5(1) in conducting investigations, making recommendations regarding temporary suspension and/or reassignment, making decisions about a complaint after their investigation is complete and/or in imposing conditions on their decision to refer a complaint to the Chief Justice of the Ontario Court of Justice. The Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the investigation of complaints by complaint subcommittees.

subs. 51.4(21)

## APPENDIX . 0

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

#### AGREEMENT ON HOW TO PROCEED

Complaint subcommittee members review the file and materials (if any), and discuss same with each other prior to determining the substance of the complaint and prior to deciding what investigatory steps should be taken (ordering transcript, requesting response, etc.). No member of a complaint subcommittee shall take any investigative steps with respect to a complaint that has been assigned to him or her without first discussing the complaint with the other complaint subcommittee member and agreeing on the course of action to be taken. If there is a dispute between the complaint subcommittee members regarding an investigatory step, the matter will be referred to a review panel for its advice and input.

### DISMISSAL OF COMPLAINT

A complaint subcommittee shall dismiss the complaint without further investigation if, in its opinion, it falls outside the Judicial Council's jurisdiction or if it is frivolous or an abuse of process.

subs. 51.4(3)

#### **CONDUCTING INVESTIGATION**

If the complaint is not dismissed, the complaint subcommittee shall conduct such investigation as it considers appropriate. The Judicial Council may engage persons, including counsel, to assist it in its investigation. The investigation shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(4), (5), (6) and (7)

#### **PREVIOUS COMPLAINTS**

A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a judge who is the subject of another complaint before the OJC, may be considered by the members of the complaint subcommittee where the Registrar, with the assistance of legal counsel (if deemed necessary by the Registrar), first determines that the prior complaint or complaints are strikingly similar in the sense of similar fact evidence and

would assist them in determining whether or not the current incident could be substantiated.

## INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audiotapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

#### TRANSCRIPTS, ETC.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved. If a transcript is ordered, court reporters are instructed not to submit the transcript to the subject judge for editing.

#### RESPONSE TO COMPLAINT

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the

## APPENDIX-B

### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at the hearing.

#### **GENERALLY**

Transcripts of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless a member advises otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

#### ADVICE AND ASSISTANCE

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint. The complaint subcommittee may also consult with members of a Review Panel to seek their input and guidance during the investigative stages of the complaint process.

subs. 51.4(5)

#### MULTIPLE COMPLAINTS

The Registrar will assign any new complaints of a similar nature against a judge who already has an open complaint file, or files, to the same complaint subcommittee that is/are investigating the outstanding file(s). This will ensure that the complaint subcommittee members who are investigating a complaint against a particular judge are aware of the fact that there is a similar complaint, whether from the same complainant or another individual, against the same judge.

When a judge is the subject of three complaints from three different complainants within a period of three years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel thereof, for their assessment of whether or not the multiple complaints should be the subject of advice to the judge by the Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

## INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

The complaint subcommittee may recommend to the appropriate Regional Senior Justice that the subject judge be suspended, with pay, or be reassigned to a different location, until the complaint is finally disposed of. If the subject judge is assigned to the region of the Regional Senior Justice who is a member of the Judicial Council, the complaint subcommittee shall recommend the suspension, with pay, or temporary reassignment to another Regional Senior Justice. The Regional Senior Justice in question may suspend or reassign the judge as the complaint subcommittee recommends. The exercise of the Regional Senior Justice's discretion to accept or reject the complaint subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice of the Ontario Court of Justice.

subs. 51.4(8), (9), (10) and (11)

## COMPLAINT AGAINST CHIEF JUSTICE ET AL – INTERIM RECOMMENDATIONS

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

# CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

The Judicial Council has established the following criteria and rules of procedure under subsection 51.1(1) and they are to be used by a complaint subcommittee in making their decision to recommend to the appropriate Regional Senior Justice the

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## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

temporary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated

## INFORMATION RE: INTERIM RECOMMENDATION

Where a complaint subcommittee recommends temporarily suspending or re-assigning a judge pending the resolution of a complaint, particulars of the factors upon which the complaint subcommittee's recommendations are based shall be provided contemporaneously to the Regional Senior Justice and the subject judge to assist the Regional Senior Justice in making his or her decision and to provide the subject judge with notice of the complaint and the complaint subcommittee's recommendation.

Where a complaint subcommittee or a review panel proposes to recommend temporarily suspending or re-assigning a judge, it may give the judge an opportunity to be heard on that issue in writing by notifying the judge by personal service, if possible, or if not registered mail of the proposed suspension or reassignment, of the reasons therefor, and of the judge's right to tender a response. If no response from the judge is received after 10 days from the date of mailing, the recommendation of an interim suspension or reassignment may proceed.

## Reports to Review Panels

#### WHEN INVESTIGATION COMPLETE

When its investigation is complete, the complaint subcommittee shall either:

- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice,
- refer the complaint to a mediator, in accordance with criteria established by the Judicial Council pursuant to section 51.1(1), or
- refer the complaint to the Judicial Council, with or without recommending that it hold a hearing.

subs. 51.4(13)

### **GUIDELINES AND RULES OF PROCEDURE**

The Regulations Act does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice of the Ontario Court of Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

#### PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint

## APPENDIX-B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

subcommittee are ready to be reported to a review panel. The members of the complaint subcommittee will also provide a legible, fully completed copy of the appropriate pages of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration.

At least one member of a complaint subcommittee's shall be present when the complaint subcommittee's report is made to a review panel. Attendance by a complaint subcommittee or review panel member may be by teleconference when necessary.

#### NO IDENTIFYING INFORMATION

The complaint subcommittee shall report its disposition of any complaint that is dismissed or referred to the Chief Justice of the Ontario Court of Justice or to a mediator to the Judicial Council without identifying the complainant or the judge who is the subject of the complaint and no information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

subs. 51.4(16)

### **DECISION TO BE UNANIMOUS**

The decision by a complaint subcommittee to dismiss a complaint, refer the complaint to the Chief Justice of the Ontario Court of Justice or refer the complaint to a mediator must be a unanimous decision on the part of the complaint subcommittee members. If the complaint subcommittee members cannot agree, the complaint must be referred to the Judicial Council.

subs. 51.4(14)

## CRITERIA FOR DECISIONS BY COMPLAINT SUBCOMMITTEES

### A) TO DISMISS THE COMPLAINT

A complaint subcommittee will dismiss a complaint after reviewing the complaint if, in the complaint subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process. A complaint subcommittee may also recommend that a complaint be dismissed if, after

their investigation, they conclude that the complaint is unfounded.

subs. 51.4(3) and (13)

### B) TO REFER TO THE CHIEF JUSTICE

A complaint subcommittee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaint subcommittee, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaint subcommittee will impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject judge could take advantage and there is agreement by the subject judge.

subs. 51.4 (13) and (15)

#### C) TO REFER TO MEDIATION

A complaint subcommittee will refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where both members are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in the *Courts of Justice Act*. Until such time as criteria are established by the Judicial Council, complaints are excluded from the mediation process in the following circumstances:

(1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

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## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - REVIEW PANELS

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

subs. 51.4(13) and 51.5

## D) TO RECOMMEND A HEARING

A complaint subcommittee will refer a complaint to the Judicial Council, or a review panel thereof, and recommend that a hearing into a complaint be held where there has been an allegation of judicial misconduct that the complaint subcommittee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct

subs.51.4(13) and (16)

### RECOMMENDATION RE: HEARING

If a recommendation to hold a hearing is made by the complaint subcommittee it may be made with, or without, a recommendation that the hearing be held in camera and if such recommendation is made, the criteria established by the Judicial Council (see page 11 below) will be used.

## E) COMPENSATION

The complaint subcommittee's report to the review panel may also deal with the question of compensation of the judge's costs for legal services, if any, incurred during the investigative stage of the process if the complaint subcommittee is of the opinion that the complaint should be dismissed and has so recommended in its report to the Judicial Council. The Judicial Council may then recommend to the Attorney General that the judge's costs for legal services be paid, in accordance with section 51.7 of the *Act*.

subs. 51.7(1)

The decision as to whether or not to recommend compensation of a judge's costs for legal services will be made on a case by case basis.

## REFERRING COMPLAINT TO COUNCIL

As noted above, a complaint subcommittee may also refer the complaint to the Judicial Council, with or without making a recommendation that it hold a hearing into the complaint. Both members of the complaint subcommittee need not agree with this recommendation and the Judicial Council, or a review panel thereof, has the power to require the complaint subcommittee to refer the complaint to it if it does not approve the complaint subcommittee's recommended disposition or if the complaint subcommittee cannot agree on the disposition. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

subs.51.4(16) and (17)

#### INFORMATION TO BE INCLUDED

Where a complaint is referred to a Review Panel of the Judicial Council by a complaint subcommittee, the complaint subcommittee shall forward to the Review Panel all documents, transcripts, statements, and other evidence considered by it in reviewing the complaint, including the response of the judge about whom the complaint is made, if any. The Review Panel shall consider such information in coming to its conclusion regarding the appropriate disposition of the complaint.

## REVIEW PANELS

#### **PURPOSE**

The Judicial Council may establish a review panel for the purpose of: -

- considering the report of a complaint subcommittee.
- considering a complaint referred to it by a complaint subcommittee
- · considering a mediator's report
- considering a complaint referred to it out of mediation, and
- considering the question of compensation

## APPENDIA-B

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - REVIEW PANELS

and the review panel has all the powers of the Judicial Council for these purposes.

subs. 49(14)

#### **COMPOSITION**

A review panel is made up of two provincially-appointed judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member of the OJC and shall not include either of the two members who served on the complaint subcommittee who investigated the complaint and made the recommendation to the review panel. One of the judges, designated by the Council, shall chair the review panel and four members constitute a quorum. The chair of the review panel is entitled to vote and may cast a second deciding vote if there is a tie.

subs. 49(15),(18) and (19)

#### WHEN REVIEW PANEL FORMED

A review panel is formed to review the decisions made about complaints by complaint subcommittees and dispose of open complaint files at every regularly scheduled meeting of the OJC, if the quorum requirements of the governing legislation can be satisfied.

#### **GUIDELINES AND RULES OF PROCEDURE**

The Regulations Act does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Statutory Powers Procedure Act does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the Statutory Powers Procedure Act.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration

of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

subs. 51.4(22)

## Review of Complaint Subcommittee's Report

#### REVIEW IN PRIVATE

The review panel shall consider the complaint subcommittee's report, in private, and may approve its disposition or may require the complaint subcommittee to refer the complaint to the Council in which case the review panel shall consider the complaint, in private.

subs. 51.4(17)

#### PROCEDURE ON REVIEW

The review panel shall examine the letter of complaint, the relevant parts of the transcript (if any), the response from the judge (if any), etc., with all identifying information removed therefrom, as well as the report of the complaint subcommittee, until its members are satisfied that the issues of concern have been identified and addressed by the complaint subcommittee in its investigation of the complaint and in its recommendation(s) to the review panel about the disposition of the complaint.

A review panel may reserve its decision on a complaint subcommittee's recommendation and may adjourn from time to time to consider its decision or direct the complaint subcommittee to conduct further investigation and report back to the review panel.

If the members of the review panel are not satisfied with the report of the complaint subcommittee, they may refer the complaint back to the complaint subcommittee for further investigation or make any other direction or request of the complaint subcommittee that they deem to be appropriate.

If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint subcommittee, and there is a tie, the chair will cast a second and deciding vote.

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## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - REVIEW PANELS

## Referral of Complaint to a Review Panel

### WHEN REFERRED

When a complaint subcommittee submits its report to a review panel, the review panel may approve the complaint subcommittee's disposition or require the complaint subcommittee to refer the complaint to it to consider. The members of a review panel will require a complaint subcommittee to refer the complaint to them in circumstances where the members of the complaint subcommittee cannot agree on the recommended disposition of the complaint or where the recommended disposition of the complaint is unacceptable to a majority of the members of the review panel.

subs. 51.4(13), (14) and (17)

### POWER OF A REVIEW PANEL ON REFERRAL

If a complaint is referred to it by a complaint subcommittee or a review panel requires a complaint subcommittee to refer a complaint to it to consider, the complainant and the subject judge may be identified to the members of the review panel who shall consider the complaint, in private, and may: —

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(16) and (18)

#### **GUIDELINES AND RULES OF PROCEDURE**

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Statutory Powers Procedure Act does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the *Statutory Powers Procedure Act*.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedures under subsection 51.1(1) with respect to the consideration of complaints that are referred to it by a complaint subcommittee or in consideration of complaints that it causes to be referred to it from a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for the purpose.

subs. 51.4(22)

## Guidelines re: Dispositions

## A) ORDERING A HEARING

A review panel will order a hearing be held in circumstances where the majority of members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the review panel believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. The recommendation to hold a hearing made by the review panel may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page 18 below) will be used.

#### B) DISMISSING A COMPLAINT

A review panel will dismiss a complaint in circumstances where the majority of members of the review panel are of the opinion that the allegation of judicial misconduct falls outside the jurisdiction of the Judicial Council, is frivolous or an abuse of process, or where the review panel is of the view that, the complaint is unfounded. A review panel will not generally dismiss as unfounded a complaint unless it is satisfied that there is no basis in fact for the allegations against the provincially-appointed judge.

## APPENDIX-II

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - REVIEW PANELS

## C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

A review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the majority of members of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is, in the opinion of the majority of members of the review panel, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel will recommend imposing conditions on their referral of a complaint to the Chief Justice of the Ontario Court of Justice where a majority of the members of a review panel agree that there is some course of action or remedial training of which the subject judge can take advantage of and there is agreement by the judge in accordance with subs. 51.4(15). The Chief Justice of the Ontario Court of Justice will provide a written report on the disposition of the complaint to the review panel and complaint subcommittee members.

### D) REFERRING A COMPLAINT TO MEDIATION

A review panel may refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where a majority of the members of the review panel are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in subsection 51.5(3) of the *Courts of Justice Act*. Until such time as criteria are established, complaints are excluded from the mediation process in the following circumstances:

(1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

## Notice of Decision

#### **DECISION COMMUNICATED**

The Judicial Council, or a review panel thereof, shall communicate its decision to both the complainant and the subject judge and if the Judicial Council decides to dismiss the complaint, it will provide the parties with brief reasons.

subs. 51.4(20)

### **ADMINISTRATIVE PROCEDURES**

Detailed information on administrative procedures to be followed by the Judicial Council when notifying the parties of its decision can be found at pages 25 and 26 of this document.

## **HEARING PANELS**

#### APPLICABLE LEGISLATION

All hearings held by the Judicial Council are to be held in accordance with section 51.6 of the *Courts of Justice Act.* 

The Regulations Act does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Statutory Powers Procedure Act applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1) S.P.P.A.). The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the Statutory Powers Procedure Act.

subs. 51.1(3) and 51.6(2)

## APPINDIX: B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - HEARINGS

The Judicial Council's rules of procedure established under subsection 51.1(1) apply to a hearing held by the Judicial Council.

subs. 51.6(3)

#### COMPOSITION

The following rules apply to a hearing panel established for the purpose of holding a hearing under section 51.6 (adjudication by the Ontario Judicial Council) or section 51.7 (considering the question of compensation):

- 1) half the members of the panel, including the chair, must be judges and half of the members of the panel must be persons who are not judges
- 2) at least one member must be a person who is neither a judge nor a lawyer
- 3) the Chief Justice of Ontario, or another judge of the Ontario Court of Appeal designated by the Chief Justice, shall chair the hearing panel
- 4) the Judicial Council may determine the size and composition of the panel, subject to paragraphs 1, 2 & 3 above
- 5) all the members of the hearing panel constitute a quorum (subs. 49(17))
- 6) the chair of the hearing panel is entitled to vote and may cast a second deciding vote if there is a tie
- 7) the members of the complaint subcommittee that investigated the complaint shall not participate in a hearing of the complaint
- 8) the members of a review panel that received and considered the recommendation of a complaint subcommittee shall not participate in a hearing of the complaint (subs. 49(20))

subs. 49(17), (18), (19) and (20)

#### **POWER**

A hearing panel established by the Judicial Council for the purposes of section 51.6 or 51.7 has all the powers of the Judicial Council for that purpose.

subs. 49(16)

### HEARINGS

#### **COMMUNICATION BY MEMBERS**

Members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate. This prohibition on communication does not preclude the Judicial Council from engaging legal counsel to assist it and, in that case, the nature of the advice given by counsel shall be communicated to the parties so that they may makes submissions as to the law.

subs. 51.6(4) and (5)

#### PARTIES TO THE HEARING

The Judicial Council shall determine who are the parties to the hearing.

subs. 51.6(6)

#### PUBLIC OR PRIVATE/ALL OR PART

Judicial Council hearings into complaints and meetings to consider the question of compensation shall be open to the public unless the hearing panel determines, in accordance with criteria established under section 51.1(1) by the Judicial Council, that exceptional circumstances exist and the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality in which case it may hold all or part of a hearing in private.

subs. 49(11) and 51.6(7)

The *Statutory Powers Procedure Act* applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1), S.P.P.A.).

subs. 51.6(2)

## APPENDIX B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - HEARINGS

If a complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of the complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

subs. 51.6(9)

### OPEN OR CLOSED HEARINGS - CRITERIA

The Judicial Council has established the following criteria under subsection 51.1(1) to assist it in determining whether or not the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. If the Judicial Council determines that exceptional circumstances exist in accordance with the following criteria, it may hold all, or part, of the hearing in private.

subs. 51.6(7)

The members of the Judicial Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

## REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

If a hearing was held in private, the Judicial Council shall order that the judge's name not be disclosed or made public unless it determines, in accordance with the criteria established under subsection 51.1(1), that there are exceptional circumstances.

subs. 51.6(8)

The members of the Judicial Council will consider the following criteria before a decision is made about when it is appropriate to publicly reveal the name of a judge even though the hearing has been held in private:

- a) at the request of the judge, or
- b) in circumstances where it would be in the public interest to do so.

# WHEN AN ORDER PROHIBITING PUBLICATION OF JUDGE'S NAME MAY BE MADE, PENDING THE DISPOSITION OF A COMPLAINT - CRITERIA

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

The members of the Judicial Council will consider the following criteria to determine when the Judicial Council may make an order prohibiting the publication of information that might identify the judge who is the subject of a complaint, pending the disposition of a complaint:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

### **NEW COMPLAINT**

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Judicial Council, would constitute an allegation of misconduct against a provincially-appointed judge outside of the ambit of the complaint which is the subject of the hearing, the Registrar shall prepare a summary of the particulars of the complaint and forward

## APPENHISH

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - PROCEDURAL CODE FOR HEARINGS

same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of members of the Judicial Council other than those who compose the panel hearing the complaint.

## PROCEDURAL CODE FOR HEARINGS

#### **PREAMBLE**

These Rules of Procedure apply to all hearings of the Judicial Council convened pursuant to section 51.6 of the *Courts of Justice Act* and are established and made public pursuant to paragraph 51.1(1)6 of the *Courts of Justice Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

#### INTERPRETATION

- 1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*.
  - (1) In this code,
    - (a) "Act" shall mean the Courts of Justice Act, R.S.O. 1990, c. C. 43, as amended.
    - (b) "Panel" means the Panel conducting a hearing and established pursuant to subsection 49(14) of the *Act*.
    - (c) "Respondent" shall mean a judge in respect of whom an order for a hearing is made pursuant to subsection 51.4(18)(a) of the *Act*.
    - (d) "Presenting Counsel" means counsel engaged on behalf of the Council to prepare and present the case against a Respondent.

#### PRESENTATION OF COMPLAINTS

The Council shall, on the making of an order for a hearing in respect of a complaint against a

- judge, engage Legal Counsel for the purposes of preparing and presenting the case against the Respondent.
- 3. Legal Counsel engaged by the Council shall operate independently of the Council.
- 4. The duty of Legal Counsel engaged under this Part shall not be to seek a particular order against a Respondent, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.
- 5. For greater certainty, Presenting Counsel are not to advise the Council on any matters coming before it. All communications between Presenting Counsel and the Council shall, where communications are personal, be made in the presence of counsel for the Respondent, and in the case of written communications, such communications shall be copied to the Respondents.
- 6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
- 7. Presenting Counsel shall prepare the Notice of Hearing.
  - (1) The Notice of Hearing shall contain,
    - (a) particulars of the allegations against the Respondent;
    - (b) a reference to the statutory authority under which the hearing will be held;
    - (c) a statement of the time and place of the commencement of the hearing;
    - (d) a statement of the purpose of the hearing;
    - (e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent's absence and the Respondent will not be entitled to any further notice of the proceeding; and,
- 8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - PROCEDURAL CODE FOR HEARINGS

#### **RESPONSE**

- 9. The Respondent may serve on Presenting Counsel and file with the Council a Response to the allegations in the Notice Hearing.
  - (1) The Response may contain full particulars of the facts on which the Respondent relies.
  - (2) A Respondent may at any time before or during the hearing serve on Presenting Counsel and file with the Council an amended Response.
  - (3) Failure to file a response shall not be deemed to be an admission of any allegations against the Respondent.

#### **DISCLOSURE**

- 10. Presenting Counsel shall, before the hearing, forward to the Respondent or to counsel for the Respondent names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
- 11. Presenting Counsel shall also provide, prior to the hearing, all non-privileged documents in its possession relevant to the allegations in the Notice of Hearing.
- 12. The Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided the Respondent with the witness's name and address, if available, and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
- 13. Part V applies, *mutatis mutandis*, to any information which comes to Presenting Counsel's attention after disclosure has been made pursuant to that Part.

## PRE-HEARING CONFERENCE

14. The Panel may order that a pre-hearing conference take place before a judge who is a member of the Council but who is not a member of the Panel to hear the allegations against the Respondent, for the purposes of narrowing the issues and promoting settlement.

#### THE HEARING

- 15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.
- 16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.
  - (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.
- 17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint subcommittee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.
  - (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.
    - (a) All testimony shall be under oath or affirmation or promise.
    - (b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
    - (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.
    - (d) All witnesses may be cross-examined by counsel for the opposite party and re-examined as required.

## APPENDIX-B

### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - POST-HEARINGS

- (e) The hearing shall be recorded verbatim and transcribed where requested. Where counsel for the Respondent requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- (f) Both Presenting Counsel and the Respondent may submit to the Panel proposed findings, conclusions, recommendations or draft orders for the consideration of the Hearing Panel.
- (g) Presenting Counsel and counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, in the order to be determined by the Hearing Panel.

#### PRE-HEARING RULINGS

- 18. Either party to the hearing may, by motion, not later than 10 days before the date set for commencement of the hearing, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint.
  - (1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:
    - (a) objecting to the jurisdiction of the Council to hear the complaint;
    - (b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Panel;
    - (c) objecting to the sufficiency of disclosure by Presenting Counsel;
    - (d) determining any point of law for the purposes of expediting the hearing; or
    - (e) determining any claim of privilege in respect of the evidence to be presented at the hearing; or
    - (f) any matters relating to scheduling.

- (2) A motion seeking any of the relief enumerated in this section may not be brought during the hearing, without leave of the Hearing Panel, unless it is based upon the manner in which the hearing has been conducted.
- (3) The Hearing Panel, may, on such grounds as it deems appropriate, abridge the time for bringing any motion provided for by the prehearing rules.
- 19. The Council shall, as soon as is reasonably possible, appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to subsection 19(1), and shall, as soon as is reasonably possible, render a decision thereon.

### POST-HEARINGS

## Disposition at Hearing

#### **DISPOSITION**

After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may

- a) warn the judge;
- b) reprimand the judge;
- c) order the judge to apologize to the complainant or to any other person;
- d) order the judge to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a judge;
- e) suspend the judge with pay, for any period;
- f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the judge be removed from office (in accordance with section 51.8).

subs. 51.6(11)

### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - POST-HEARINGS

#### **COMBINATION OF SANCTIONS**

The Judicial Council may adopt any combination of the foregoing sanctions except that the recommendation to the Attorney General that the judge be removed from office will not be combined with any other sanction.

subs. 51.6(12)

## Report to Attorney General

#### REPORT

The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Judicial Council) and the Attorney General may make the report public if he/she is of the opinion this would be in the public interest.

subs. 51.6(18)

#### **IDENTITY WITHHELD**

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with the criteria established by the Judicial Council under subsection 51.6(8) (please see page B – 11 above).

subs. 51.6(19)

#### JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council (please see page B – 11 above) and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

### Order to Accommodate

If the effect of a disability on the judge's performance of the essential duties of judicial office is a factor in a complaint, which is either dismissed or disposed of in any manner short of recommending to the Attorney General that the judge be removed, and the judge would be able to perform the essential duties of judicial office if his or her needs were accommodated, the Judicial Council shall order the judge's needs to be accommodated to the extent necessary to enable him or her to perform those duties.

Such an order to accommodate may not be made if the Judicial Council is satisfied that making the order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Judicial Council shall also not make an order to accommodate against a person without ensuring that the person has had an opportunity to participate and make submissions.

An order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 51.6(13), (14), (15), (16) and (17)

## Removal from Office

REMOVAL

A provincially-appointed judge may be removed from office only if:

- a) a complaint about the judge has been made to the Judicial Council; and
- b) the Judicial Council, after a hearing, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undu

## APPENDIX B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPENSATION

hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),

- (ii) conduct that is incompatible with the due execution of his or her office, or
- (iii) failure to perform the duties of his or her office.

subs. 51.8(1)

#### TABLING OF RECOMMENDATION

The Attorney General shall table the Judicial Council's recommendation in the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of its next session.

subs. 51.8(2)

### ORDER REMOVING JUDGE

An order removing a provincially-appointed judge from office may be made by the Lieutenant Governor on the address of the Legislative Assembly.

subs. 51.8(3)

#### APPLICATION

This section applies to provincially-appointed judges who have not yet attained retirement age and to provincially-appointed judges whose continuation in office after attaining retirement age has been approved by the Chief Justice of the Ontario Court of Justice. This section also applies to a Chief, or Associate Chief Justice who has been continued in office by the Judicial Council, either as a Chief, or Associate Chief Justice of the Ontario Court of Justice, or who has been continued in office as a judge by the Judicial Council.

subs. 51.8(4)

#### COMPENSATION

#### AFTER COMPLAINT DISPOSED OF

When the Judicial Council has dealt with a complaint against a provincially-appointed judge, it shall consider whether the judge should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken in relation to the complaint, including review and investigation of a

complaint by a complaint subcommittee, review of a complaint subcommittee's report by the Judicial Council, or a review panel thereof, review of a mediator's report by the Judicial Council, or a review panel thereof, the hearing into a complaint by the Judicial Council, or a hearing panel thereof, and legal services incurred in connection with the question of compensation. The Judicial Council's consideration of the question of compensation shall be combined with a hearing into a complaint, if one is held.

subs. 51.7(1) and (2)

#### PUBLIC OR PRIVATE

If a hearing was held and was public, the consideration of the compensation question shall be public; otherwise, the consideration of the question of compensation shall take place in private.

subs. 51.7(3)

#### RECOMMENDATION

If the Judicial Council is of the opinion that the judge should be compensated, it shall make such a recommendation to the Attorney General, indicating the amount of compensation.

subs. 51.7(4)

## WHERE COMPLAINT DISMISSED AFTER A HEARING

If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount of compensation.

subs. 51.7(5)

#### DISCLOSURE OF NAME

The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the judge's name unless there was a public hearing into the complaint or the Judicial Council has otherwise made the judge's name public.

subs. 51.7(6)

## APPENDITE

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

#### AMOUNT AND PAYMENT

The amount of compensation recommended to be paid may relate to all, or part, of the judge's costs for legal services and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General shall pay compensation to the judge in accordance with the recommendation.

subs. 51.7(7) and (8)

## CONFIDENTIALITY AND PROTECTION OF PRIVACY

#### INFORMATION TO PUBLIC

At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

subs. 51.3(5)

#### POLICY OF JUDICIAL COUNCIL

The complaint subcommittee's investigation into a complaint shall be conducted in private, and its report about a complaint or referral of a complaint to the Judicial Council, or a review panel thereof, is considered in private, in accordance with subsections 51.4(6) and 51.4(17) and (18). It is the policy of the Judicial Council, made pursuant to subsections 51.4(21) and (22), that it will not confirm or deny that a particular complaint has been made to it, as permitted by subsection 51.3(5), unless the Judicial Council, or a hearing panel thereof, has determined that there will be a public hearing into the complaint.

## COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

The investigation into a complaint by a complaint subcommittee shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(6) and (7)

#### REVIEW PANEL DELIBERATION PRIVATE

The Judicial Council, or a review panel thereof, shall: –

- consider the complaint subcommittee's report, in private, and may approve its disposition, or
- may require the complaint subcommittee to refer the complaint to the Council.

subs. 51.4(17)

If a complaint is referred to it by a complaint subcommittee, the Judicial Council, or a Review Panel thereof, shall consider such complaint, in private, and may:

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Judge (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(18)

## WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council or a review panel thereof, and such a complaint will be considered in private.

subs.51.4(16) and (17)

#### HEARINGS MAY BE PRIVATE

If the Judicial Council determines, in accordance with criteria established under subsection 51.1(1) that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of a hearing in private.

subs. 51.6(7)

#### JUDGE'S NAME NOT DISCLOSED

If a hearing is held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1(1) that there are exceptional circumstances, order the judge's name not be disclosed or made public.

subs. 51.6(8)

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## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

#### ORDER PROHIBITING PUBLICATION

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

#### CRITERIA ESTABLISHED

For the criteria established by the Judicial Council under subsection 51.1(1) with respect to subsections 51.6(7), (8) and (10), please see page B – 11 above.

### REPORT TO ATTORNEY GENERAL

If a complainant or witness asked that their identity be withheld during the hearing, and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with criteria established under subsection 51.6(8).

subs. 51.6(19)

### JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

#### ORDER NOT TO DISCLOSE

The Judicial Council or a complaint subcommittee may order that any information or documents relating

to a mediation or a Judicial Council meeting or hearing that was not held in public, whether the information or documents are in the possession of the Judicial Council or of the Attorney General, or of any other person, are confidential and shall not be disclosed or made public.

subs. 49(24) and (25)

#### **EXCEPTION**

The foregoing does not apply to information and documents that the *Courts of Justice Act* requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purpose of mediation or a Judicial Council meeting or hearing.

subs. 49(26)

### AMENDMENTS TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Section 65 of the *Freedom of Information and Protection* of *Privacy Act* is amended by adding the following subsections:

- (4) This *Act* does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation.
- (5) This *Act* does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:
- 1. The Judicial Council or its complaint subcommittee has ordered that the record or information in the record not be disclosed or made public.
- 2. The Judicial Council has otherwise determined that the record is confidential.
- 3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public.

### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ACCOMMODATION OF DISABILITIES

## ACCOMMODATION OF DISABILITIES

#### APPLICATION FOR ORDER

A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order that such needs be accommodated.

subs. 45.(1)

#### **DUTY OF JUDICIAL COUNCIL**

If the Judicial Council finds that a judge is unable, because of a disability, to perform the essential duties of office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 45.(2)

#### UNDUE HARDSHIP

Subsection 45.(2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

subs. 45.(3)

#### **GUIDELINES AND RULES OF PROCEDURE**

In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedures established under subsection 51.1(1).

subs. 45.4(4)

#### OPPORTUNITY TO PARTICIPATE

The Judicial Council will not make an order to accommodate against a person under subsection 45.(2) without ensuring that the person has had an opportunity to participate and make submissions.

subs. 45.(5)

#### ORDER BINDS THE CROWN

The order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 45.(6)

#### **CHAIR FOR MEETING**

The Chief Justice of Ontario, or designate from the Court of Appeal, shall chair meetings held for the purposes of ordering accommodation.

subs. 49.(8)

#### CHAIR ENTITLED TO VOTE

The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 49.(10)

#### QUORUM FOR MEETING

Eight members of the Judicial Council, including the chair, constitute a quorum for the purposes of dealing with an application for accommodation of disabilities. At least half the members present must be judges and at least four members present must be persons who are not judges.

subs. 49.(13)

#### **EXPERT ASSISTANCE**

The Judicial Council may engage persons, including counsel, to assist it.

subs. 49.(21)

#### CONFIDENTIAL RECORDS

The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. An order of non-disclosure may be made whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. An order of non-disclosure cannot be made with respect to information and/or documents that the *Courts of Justice Act* 

## 

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ACCOMMODATION OF DISABILITIES

requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

subs. 49(24)(25) & (26)

The Judicial Council shall establish and make public rules governing its own procedures, including guidelines and rules of procedure for the purpose of the accommodation of disabilities.

subs. 51.1(1)

## ACCOMMODATION ORDER AFTER A HEARING

If, after a hearing into a complaint has been held, the Judicial Council finds that the judge who was the subject of the complaint is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 51.6(13)

#### **RULES OF PROCEDURE AND GUIDELINES**

The following are the rules of procedure and guidelines established by the Ontario Judicial Council for the purpose of the accommodation of disabilities.

#### APPLICATION IN WRITING

An application for accommodation of disability by a judge shall be in writing and shall include the following information: -

- a description of the disability to be accommodated;
- a description of the essential duties of the judge's office for which accommodation is required;
- a description of the item and/or service required to accommodate the judge's disability;
- a signed letter from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the judge's application for accommodation;
- the application and supporting materials are inadmissible, without the consent of the appli-

- cant, in any investigation or hearing, other than the hearing to consider the question of accommodation;
- disclosure of the application and supporting materials by the Ontario Judicial Council to the public is prohibited without the consent of the applicant.

#### **ACCOMMODATION SUBCOMMITTEE**

On receipt of an application, the Council will convene a subcommittee of the Council composed of one judge and one lay member of the Council (an "accommodation subcommittee"). At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such experts and advice as may be required, to formulate and report an opinion to the Council in relation to the following matters:

- the period of time that the item and/or service would be required to accommodate the judge's disability;
- the approximate cost of the item and/or service required to accommodate the judge's disability for the length of time the item and/or service is estimated to be required (i.e., daily, weekly, monthly, yearly).

### REPORT OF ACCOMMODATION SUBCOMMITTEE

The report to the Council shall consist of all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Council in its report.

## INITIAL CONSIDERATION OF APPLICATION AND REPORT

The Judicial Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives

### THRESHOLD TEST FOR **QUALIFICATION AS DISABILITY**

The Judicial Council will be guided generally by Human Rights jurisprudence relating to the definition of "disability" for the purposes of determining whether an order to accommodate is warranted.

The Judicial Council will consider a condition to amount to a disability where it may interfere with the Judge's ability to perform the essential functions of a judge's office.

#### NOTIFICATION OF MINISTER

If the Judicial Council is satisfied that the condition meets the threshold test for qualification as a disability and if the Judicial Council is considering making an order to accommodate same, then the Judicial Council shall provide a copy of the application for accommodation of disability together with the report of the accommodation subcommittee to the Attorney General, at its earliest convenience. The report of the accommodation subcommittee shall include all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

#### SUBMISSIONS ON UNDUE HARDSHIP

The Judicial Council will invite the Minister to make submissions, in writing, as to whether or not any order that the Council is considering making to accommodate a judge's disability will cause "undue hardship" to the Ministry of the Attorney General or any other person affected by the said order to accommodate The Judicial Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.

In considering whether accommodation of the applicant will cause undue hardship, the Council will generally be guided by Human Rights jurisprudence relating to

the question whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

#### TIME FRAME FOR RESPONSE

The Judicial Council shall request that the Minister respond to its notice of the judge's application for accommodation within thirty (30) calendar days of the date of receipt of notification from the Judicial Council. The Minister will, within that time frame, advise the Judicial Council whether or not the Minister intends to make any response to the application for accommodation. If the Minister does intend to respond, such response shall be made within sixty (60) days of the Minister's acknowledgement of the notice and advice that the Minister intends to respond. The Judicial Council will stipulate in its notice to the Minister that an order to accommodate will be made in accordance with the judge's application and the Judicial Council's initial determination in the absence of any submission or acknowledgement from the Minister.

### MEETING TO DETERMINE ORDER TO ACCOMMODATE

After receipt of the Minister's submissions with respect to "undue hardship" or the expiration of the time period specified in its notice to the Minister, whichever comes first, the Ontario Judicial Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the judge's disability. The Judicial Council will consider the judge's application and supporting material and submissions made, if any, regarding the question of "undue hardship", before making its determination.

#### COPY OF ORDER

A copy of the order made by the Judicial Council to accommodate a judge's disability shall be provided to the judge and to any other person affected by the said order within ten (10) calendar days of the date of the decision being made.

## 

ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - SPECIAL CONSIDERATIONS

## SPECIAL CONSIDERATIONS

#### FRENCH-SPEAKING COMPLAINANTS/IUDGES

Complaints against provincially-appointed judges may be made in English or French.

subs. 51.2(2)

A hearing into a complaint by the Judicial Council shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request, to be given before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

subs. 51.2(3)

This entitlement to translation and interpretation extends to mediation and to the consideration of the question of compensation, if any.

subs. 51.2(4)

The Judicial Council may direct that a hearing or mediation of a complaint where a complainant or witness speaks French, or the complained-of judge speaks French, be conducted bilingually, if the Judicial Council is of the opinion that it can be properly conducted in that manner.

subs. 51.2(5)

A directive under subsection (5) may apply to a part of the hearing or mediation and, in that case, subsections (7) and (8) below apply with necessary modifications.

subs. 51.2(6)

In a bilingual hearing or mediation,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) in the case of a mediation, discussions may take place in either language;

d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

subs. 51.2(7)

In a bilingual hearing or mediation, if the complainant or the judge complained-of does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

subs. 51.2(8)

### COMPLAINTS AGAINST CHIEF JUSTICE ET AL

If the Chief Justice of the Ontario Court of Justice is the subject of a complaint, the Chief Justice of Ontario shall appoint another judge of the Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice until the complaint is finally disposed of. The Associate Chief Justice appointed to the Judicial Council shall chair meetings and hearings of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice and appoint temporary members of the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(a) and (b)

Any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice (by a complaint subcommittee after its investigation, by the Judicial Council or a review panel thereof after its review of a complaint subcommittee's report or referral or by the Judicial Council after mediation), shall be made to the Chief Justice of the Superior Court of Justice instead of the Chief Justice of the Ontario Court of Justice, until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(c)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, any complaints that would other-

## APPENDIX-B

### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - SPECIAL CONSIDERATIONS

wise be referred to the Chief Justice of the Ontario Court of Justice shall be referred to the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(a)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(b)

If either the Associate Chief Justice or Regional Senior Justice appointed to the Judicial Council is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or Regional Senior Justice, as the case may be, until the complaint against the Associate Chief Justice, or Regional Senior Justice appointed to the Judicial Council, is finally disposed of.

subs. 50(3)

## COMPLAINTS AGAINST SMALL CLAIMS COURT JUDGES

Subsection 87.1(1) of the *Courts of Justice Act* applies to provincially-appointed judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, with special provisions.

#### **COMPLAINTS**

When the Judicial Council deals with a complaint against a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced

by a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.

- 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
- 3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

subs. 87.1(4)

#### **COMPLAINTS AGAINST MASTERS**

Subsection 87.(3) of the *Courts of Justice Act* states that sections 44 to 51.12 applies to masters, with necessary modifications, in the same manner as to provincially-appointed judges.

#### **COMPLAINTS**

When the Judicial Council deals with a complaint against a master, the following special provisions apply:

- 1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
- 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
- 3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

## APPENDIX-B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ADMINISTRATIVE MATTERS

### ADMINISTRATIVE MATTERS

#### **INTAKE/OPENING COMPLAINT FILES:**

- · Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provinciallyappointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- if the complaint is within the jurisdiction of the OJC (any provincially-appointed judge or master full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the Registrar will review each letter of complaint upon receipt and if it is determined that a file will be opened and assigned, the Registrar will determine whether or not it is necessary to order a transcript and/or audiotape for review by the complaint subcommittee and, if so, will direct the Assistant Registrar to order same.
- the complaint is added to the tracking form, a sequential file number is assigned, a letter of acknowledgement is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed

and a letter to the complaint subcommittee members, together with the Registrar's recommendations regarding the file, if any, is prepared. Copies of all materials are placed in the office copy and each member's copy of the complaint file.

Status reports on all open complaint files – with identifying information removed – is provided to each member of the OJC at each of its regular meetings.

#### **COMPLAINT SUBCOMMITTEES:**

Complaint subcommittee members endeavour to review the status of all opened files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

A letter advising the complaint subcommittee members that they have had a new case assigned to them is sent to the complaint subcommittee members, for their information, within a week of the file being opened and assigned. The complaint subcommittee members are contacted to determine if they want their copy of the file delivered to them or kept in their locked filing cabinet drawer in the OJC office. If files are delivered, receipt of the file by the member is confirmed. Complaint subcommittee members may attend at the OJC office to examine their files during regular office hours.

Complaint subcommittee members will endeavour to review and discuss their assigned files within a month of receipt of the file. All material (transcripts, audiotapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, and not by individual complaint subcommittee members.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved.

## APPENDIBLE

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ADMINISTRATIVE MATTERS

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at a hearing.

Transcripts and/or audiotapes of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless the members advise otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint.

subs. 51.4(5)

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The complaint subcommittee will also provide a legible, fully completed copy of pages 2 and 3 of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration. No information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

At least one member of a complaint subcommittee shall be present when the subcommittee's report is made to a review panel. Complaint subcommittee members may also attend by teleconference when necessary.

#### **REVIEW PANELS:**

The chair of the review panel shall ensure that at least one copy of the relevant page of the complaint intake form is completed and provided to the Registrar at the conclusion of the review panel hearing.

#### **MEETING MATERIALS:**

All material prepared for meetings of the Ontario Judicial Council are confidential and shall not be disclosed or made public.

When a complaint subcommittee has indicated that it is ready to make a report to a review panel, the Registrar will prepare and circulate a draft case summary and a draft letter to the complainant to the members of the complaint subcommittee making the report and the members of the review panel assigned to hear the complaint subcommittee's report. The draft case summary and draft letter to the complainant will be circulated to the members for their review at least a week prior to the date of the scheduled Judicial Council meeting. Amendments to the draft case summary and the draft letter to the complainant may be made after discussion by the Judicial Council members at the meeting held to consider the complaint subcommittee's recommendation on individual complaint files.

## APPENDIX-B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ADMINISTRATIVE MATTERS

The draft and final case summary and the draft letter to the complainant which is submitted for approval will not contain any information which would identify either the complainant or the subject judge.

A copy of the final case summary is filed in every closed complaint file together with a copy of the final letter to the complainant advising of the disposition of the complaint.

## NOTICE OF DECISION – NOTIFICATION OF PARTIES:

After the draft letter to the complainant has been approved, by the investigating complaint subcommittee and the review panel, it is prepared in final form and sent to the complainant.

Complainants, in cases where their complaint is dismissed, are given notice of the decision of the OJC, with reasons, as required by subsection 51.4(2) of the *Courts of Justice Act*.

The OJC has distributed a waiver form for all judges to sign and complete, instructing the OJC of the circumstances in which an individual judge wishes to be advised of complaints made against them, which are dismissed. The OJC has also distributed an address form for all judges to sign and complete, instructing the OJC of the address to which correspondence about complaint matters should be sent.

Judges who had been asked for a response to the complaint, or who, to the knowledge of the OJC are otherwise aware of the complaint, will be contacted by telephone after the complaint has been dealt with and advised of the decision of the OJC. A letter confirming the disposition of the complaint will also be sent to the judge, in accordance with his/her instructions.

#### **CLOSING FILES:**

Once the parties have been notified of the OJC's decision, the original copy of the complaint file is marked "closed" and stored in a locked filing cabinet. Complaint subcommittee members return their copies of the file to the Registrar to be destroyed or advise, in writing, that they have destroyed their copy of the complaint file. If a member's copy of the complaint file, or written notice of the file's destruction, is not received within two weeks after the review panel meeting, OJC staff will contact the complaint subcommittee member, to remind him or her to destroy his or her copy of the complaint file, and provide written notice, or arrange to have the file returned to the OJC, by courier, for shredding.

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## APPENDIX-C

ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

# ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

The Continuing Education Plan for the Ontario Court of Justice has the following goals:

- 1. Maintaining and developing professional competence.
- 2. Maintaining and developing social awareness.
- 3. Encouraging personal growth.

The Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, *Charter of Rights*, skills training and social context. While many of the programs attended by the judges of the Ontario Court of Justice are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs. In addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

#### **EDUCATION SECRETARIAT**

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice's research counsel serve as consultants. The Secretariat meets approximately four times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- Promote education as a way to encourage excellence; and
- Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

The goals of the Education Secretariat are:

- 1. To stimulate continuing professional and personal development;
- 2. To ensure that education is relevant to the needs and interests of the provincial judiciary;
- 3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
- 4. To increase knowledge and awareness of community and social services structures and resources that may assist and complement educational programs and the work of the courts;
- 5. To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
- 6. To promote an understanding of judicial development;
- 7. To facilitate the desire for life-long learning and reflective practices;

## APPENDIX: C

### ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

- 8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
- 9. To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice is divided into two parts;

- 1. First Year Education,
- 2. Continuing Education.

#### 1. FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice is provided with certain texts and materials upon appointment including:

- Commentaries on Judicial Conduct (Canadian Judicial Council)
- · Martin's Criminal Code
- Family Law Statutes of the Ontario Court of Justice
- The Conduct of a Trial
- · Judge's Manual
- Family Law Manual
- Rules of the Ontario Court of Justice in Criminal Proceedings
- Writing Reasons
- Ethical Principles for Judges (Canadian Judicial Council)

The Ontario Court of Justice organizes a one-day education program for newly appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and judicial ethics, courtroom demeanour and behaviour, available

resources, etc. This program is presented at the Office of the Chief Justice twice a year.

Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly-appointed judge for a period of time (usually several weeks prior to swearing-in) to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom, attends in chambers with experienced judges and has an 'opportunity to become familiar with their new responsibilities.

During the first year following appointment, or so soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court judges (C.A.P.C.J.) at Carling Lake in the Province of Quebec. This intensive one-week program is practical in nature and is oriented principally to the area of criminal law, with some reference to areas of family law. Judges in the first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Ontario Court of Justice (These programs are outlined under the heading "Continuing Education").

Each judge at the time of appointment is invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges. New judges also have the opportunity (as do all judges) to discuss matters of concern or interest with their peers at any time.

All judges from the date of their appointment have equal access to a number of resources that impact directly or indirectly upon the work of the Ontario Court of Justice, including legal texts, case reporting services, the Ontario Court of Justice Research Centre (discussed below), computer courses and courses in Quicklaw (a computer law database and research facility).

## APPINDIX C

#### ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

#### 2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types;

- 1) Programs presented by the Ontario Conference of Judges usually of particular interest to judges in the fields of criminal or family law respectively;
- 2) Programs presented by the Education Secretariat.

## I. PROGRAMS PRESENTED BY THE ONTARIO CONFERENCE OF JUDGES

The programs presented by the Ontario Conference of Judges constitute the **Core Program** of the Ontario Court of Justice education programming. The Ontario Conference of Judges has two Education Committees (criminal and family) composed of a number of judges, one of whom is normally designated as the education chair. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

The Ontario Conference of Judges presents three education programs in the area of family law, one each in January (the Judicial Development Institute), May (in conjunction with the Annual meeting of the Court) and September. Generally speaking, the principal topics are a) Child Welfare, and b) Family Law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

There are also two major criminal law programs presented each year.

- a) A three-day Regional Seminar is organized in October and November of each year at four regional locations. These seminars customarily focus on areas of sentencing and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations.
- b) A two and a half day education seminar is presented in the month of May in conjunction with

the annual meeting of the Court. All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

In 1998, the Ontario Conference of Judges assumed responsibility for the University Education Program which was traditionally a program either of the Chief Justice's Office or of the Education Secretariat. This program takes place over a five-day period in the spring in a university or similar setting. It provides an opportunity for approximately 30 – 35 judges to deal in depth with criminal law education topics in a more academic context.

#### II. SECRETARIAT PROGRAMS

The programs that are planned and presented by the Education Secretariat tend to deal with subject matter that is neither predominantly criminal nor family, or that can be presented on more than one occasion to different groups of judges.

- 1. JUDGMENT WRITING: This two-day seminar is presented to a group of approximately 10 judges at a time as funding permits. Lately two seminars have been presented in February of each year at the Office of the Chief Justice by Professor Edward Berry of the University of Victoria.
  - In the 1997/98 fiscal year the Education Secretariat contracted with Professor Berry to prepare a text in judgment writing for all judges of the Court. That text has now been prepared and distributed to all judges of the Court and is now in its second edition.
- 2. PRE-RETIREMENT SEMINARS: Intended to assist judges in their retirement planning (together with their spouses), this two and one-half day program deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.
- 3. JUDICIAL COMMUNICATION PROGRAM. In March, 1998, the Ontario Court of Justice retained the services of Professor Gordon Zimmerman together with Professor Alayne Casteel of the University of Nevada to present a training program on Judicial Communication. The program involved directed activities and dis-

## A PENDING

## ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

cussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 Ontario Court of Justice judges, was intended to serve as a pilot project for future seminars on judicial communication, which will be presented as funding and scheduling permits. The Secretariat put on the first of these seminars in March, 2000. It was attended by 16 judges of the Ontario Court of Justice and 2 from the Canadian Association of Provincial Court Judges who were invited to observe and participate in order to assess the program for use in other provinces. This program was organized, developed and presented by Professor Neil Gold and his associate Frank Borowicz who adapted the pilot project to the specific role of a trial judge in a Canadian court.

4. SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the program during the planning process, which lasted over 12 months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Ontario Court of Justice Education Programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques including large and small group sessions were used in the course of the program. A group of judge facilitators were specifically trained for this program which was presented following significant community consultation.

In September 2000 the Ontario Conference of Judges and the Canadian Association of Provincial Court Judges met in Ottawa for a combined conference which covered, *inter alia*, poverty issues and, in addition, issues related to aboriginal justice.

As part of the Court's commitment to social context education, the Ontario Conference of Judges has created an *ad hoc* equality committee to ensure that social context issues are included and addressed on an on-going basis in the education programs of the associations.

#### III: EXTERNAL EDUCATION PROGRAMS

- 1. FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of courses: (a) Terminology courses for francophone judges; (b) Terminology courses for anglophone (bilingual) judges.
- 2. OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:
  - Canadian Association of Provincial Court Judges
  - · National Judicial Institute
  - Federation of Law Societies: Criminal
  - (Substantive Law/Procedure/Evidence) & Family Law
  - International Association of Juvenile and Family Court Magistrates
  - Canadian Bar Association
  - Criminal Lawyers' Association
  - Advocate's Society Conference

- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice
- International Association of Women Judges (Canadian Chapter)
- Ontario Family Court Clinic Conference
- Canadian Institute for Advanced Legal Studies

The process involves an application by a judge to attend such programs, a peer selection committee, and a program appraisal. This program depends upon available funding as determined by the Education Secretariat on an annual basis.

The Education Secretariat has however established a Conference Attendance Committee to consider applications by individuals judges for funding to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. Funding, when provided, is usually less than 100% since it is designed to provide supplementary assistance to judges who are prepared to commit some of their own resources to attend.

3. COMPUTER COURSES: The Ontario Court of Justice, through a tendered contract with a training vendor previously organized a series of computer training courses for judges of the Ontario Court of Justice. These courses were organized according to skill level and geographic location and presented at different times throughout the Province. Judges typically attended at the offices of the training vendor for courses in computer operation, word-processing and data storage and retrieval. Other courses were and are presented in the use of *Quicklaw* (the computer law database and research facility).

As the Desktop Computer Implementation (D.C.I.) Project and the Integrated Justice Project were implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges was significantly increased by the Project in order to ensure appropriate levels of computer literacy for all members of the Court.

4. NATIONAL JUDICIAL INSTITUTE (N.J.I.): The Ontario Court of Justice through its Education Secretariat makes a financial contribution to the operation of the National Judicial Institute. The N.J.I., based in Ottawa, sponsors a number of education programs across the country for federally and provincially appointed judges. Individual judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Justice is a member of the Board of the N.J.I.

The Ontario Court of Justice has entered into a joint venture with the N.J.I. which resulted in the hiring of an Education Director for the Ontario Court of Justice who is also responsible for the coordination and development of programs for Provincial judges in other provinces.

#### IV. OTHER EDUCATIONAL RESOURCES

- 1. JUDICIAL RESEARCH CENTRE: Judges of the Ontario Court of Justice have access to the Ontario Court of Justice Research Centre located at Old City Hall in Toronto. The Research Centre, a law library and computer research facility, is staffed by two research counsel together with support staff and is accessible in person, by telephone, E-mail or fax. The Research Centre responds to specific requests from judges for research and, in addition, provides updates with respect to legislation and relevant case law through its regular publication 'Items of Interest'.
- 2. RECENT DEVELOPMENTS: The Honourable Mr. Justice Ian MacDonnell also provides all interested judges of the Ontario Court of Justice with his summary and comments on current criminal law decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled 'Recent Developments'.
- 3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up

## APPLNDIX-C

## ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.

- 4. REGIONAL MEETINGS: The current seven regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.
- 5. In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected *inter alia* through continuing peer discussions and individual reading and research.

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## APPENDIX-D

COURTS OF JUSTICE ACT
CHAPTER C.43
ONTARIO JUDICIAL COUNCIL

The following excerpt from the *Courts of Justice Act*, c.43 should not be relied on as the authoritative text. The authoritative text is set out in the official volumes and in office consolidations printed by Publications Ontario.

## COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

### **SECTION 49**

### JUDICIAL COUNCIL

49. (1) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French.

#### COMPOSITION

- (2) The Judicial Council is composed of,
- (a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;
- (b) the Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;
- (c) a regional senior judge of the Ontario Court of Justice, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
- (d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;
- (e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;
- (f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;
- (g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

#### TEMPORARY MEMBERS

(3) The Chief Justice of the Ontario Court of Justice may appoint a judge of that division to be a temporary member of the Judicial Council in the place of another provincial judge, for the purposes of dealing with a complaint, if the requirements of subsections (13), (15), (17), (19) and (20) cannot otherwise be met.

#### CRITERIA

(4) In the appointment of members under clauses (2) (d), (f) and (g), the importance of reflecting, in the composition of the Judicial Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

#### TERM OF OFFICE

(5) The regional senior judge who is appointed under clause (2) (c) remains a member of the Judicial Council until he or she ceases to hold office as a regional senior judge.

#### Same

(6) The members who are appointed under clauses (2) (d), (f) and (g) hold office for four-year terms and shall not be reappointed.

#### STAGGERED TERMS

(7) Despite subsection (6), one of the members first appointed under clause (2) (d) and two of the members first appointed under clause (2) (g) shall be appointed to hold office for six-year terms.

#### CHAIR

(8) The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the meetings and hearings of the Judicial Council that deal with complaints against particular judges and its meetings held for the purposes of section 45 and subsection 47 (5).

#### Same

(9) The Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, shall chair all other meetings and hearings of the Judicial Council

#### Same

(10) The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

#### OPEN AND CLOSED HEARINGS AND MEETINGS

(11) The Judicial Council's hearings and meetings under sections 51.6 and 51.7 shall be open to the public, unless subsection 51.6 (7) applies; its other hearings and meetings may be conducted in private, unless this *Act* provides otherwise.

#### VACANCIES

(12) Where a vacancy occurs among the members appointed under clause (2) (d), (f) or (g), a new member similarly qualified may be appointed for the remainder of the term.

## APPENDIX-D

### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### QUORUM

- (13) The following quorum rules apply, subject to subsections (15) and (17):
- 1. Eight members, including the chair, constitute a quorum.
- At least half the members present must be judges and at least four must be persons who are not judges.

#### REVIEW PANELS

(14) The Judicial Council may establish a panel for the purpose of dealing with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

#### Same

- (15) The following rules apply to a panel established under subsection (14):
- 1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
- 2. One of the judges, as designated by the Judicial Council, shall chair the panel.
- 3. Four members constitute a quorum.

#### HEARING PANELS

(16) The Judicial Council may establish a panel for the purpose of holding a hearing under section 51.6 and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

#### Same

- (17) The following rules apply to a panel established under subsection (16):
- 1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
- 2. At least one member must be a person who is neither a judge nor a lawyer.
- 3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
- 4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

5. All the members of the panel constitute a quorum.

#### CHAIR

(18) The chair of a panel established under subsection (14) or (16) is entitled to vote, and may cast a second deciding vote if there is a tie.

#### PARTICIPATION IN STAGES OF PROCESS

- (19) The members of the subcommittee that investigated a complaint shall not,
- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
- (b) participate in a hearing of the complaint under section 51.6.

#### Same

(20) The members of the Judicial Council who dealt with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) shall not participate in a hearing of the complaint under section 51.6.

#### EXPERT ASSISTANCE

(21) The Judicial Council may engage persons, including counsel, to assist it.

#### SUPPORT SERVICES

(22) The Judicial Council shall provide support services, including initial orientation and continuing education, to enable its members to participate effectively, devoting particular attention to the needs of the members who are neither judges nor lawyers and administering a part of its budget for support services separately for that purpose.

#### Same

(23) The Judicial Council shall administer a part of its budget for support services separately for the purpose of accommodating the needs of any members who have disabilities

#### CONFIDENTIAL RECORDS

(24) The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.

#### Same

(25) Subsection (24) applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person.

## APPENDIX-D

## COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### **EXCEPTIONS**

- (26) Subsection (24) does not apply to information and documents,
- (a) that this *Act* requires the Judicial Council to disclose; or
- (b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

#### PERSONAL LIABILITY

(27) No action or other proceeding for damages shall be instituted against the Judicial Council, any of its members or employees or any person acting under its authority for any act done in good faith in the execution or intended execution of the Council's or person's duty.

#### REMUNERATION

(28) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council.

### **SECTION 50**

## COMPLAINT AGAINST CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

- 50. (1) If the Chief Justice of the Ontario Court of Justice is the subject of a complaint,
- (a) the Chief Justice of Ontario shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of;
- (b) the Associate Chief Justice of the Ontario Court of Justice shall chair meetings and hearings of the Council instead of the Chief Justice of the Ontario Court of Justice, and make appointments under subsection 49 (3) instead of the Chief Justice, until the complaint is finally disposed of and
- (c) any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice under clause 51.4 (13) (b) or 51.4 (18) (c), subclause 51.5 (8) (b) (ii) or clause 51.5 (10) (b) shall be made to the Chief Justice of the Superior Court of Justice instead of to the Chief Justice of the Ontario Court of Justice.

### SUSPENSION OF CHIEF JUSTICE

- (2) If the Chief Justice of the Ontario Court of Justice is suspended under subsection 51.4 (12),
  - (a) complaints that would otherwise be referred to the Chief Justice of the Ontario Court of Justice under clauses 51.4 (13) (b) and 51.4 (18) (c), subclause 51.5 (8) (b) (ii) and clause 51.5 (10) (b) shall be referred to the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of; and
  - (b) annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of.

## COMPLAINT AGAINST ASSOCIATE CHIEF JUSTICE OR REGIONAL SENIOR JUDGE

(3) If the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or regional senior judge, as the case may be, until the complaint is finally disposed of.

### **SECTION 51**

#### PROVISION OF INFORMATION TO PUBLIC

51. (1) The Judicial Council shall provide, in court-houses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

#### Same

(2) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

#### ASSISTANCE TO PUBLIC

(3) Where necessary, the Judicial Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

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## COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### TELEPHONE ACCESS

(4) The Judicial Council shall provide province-wide free telephone access, including telephone access for the deaf, to information about itself and its role in the justice system.

#### PERSONS WITH DISABILITIES

(5) To enable persons with disabilities to participate effectively in the complaints process, the Judicial Council shall ensure that their needs are accommodated, at the Council's expense, unless it would impose undue hardship on the Council to do so, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

#### ANNUAL REPORT

(6) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant.

#### TABLING

(7) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly.

### **SECTION 51.1**

#### RULES

51.1 (1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

- 1. Guidelines and rules of procedure for the purpose of section 45.
- 2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
- 3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22)
- 4. If applicable, criteria for the purpose of subsection 51.5 (2).
- 5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).

- 6. Rules of procedure for the purpose of subsection 51.6 (3).
- 7. Criteria for the purpose of subsection 51.6 (7).
- 8. Criteria for the purpose of subsection 51.6 (8).
- 9. Criteria for the purpose of subsection 51.6 (10).

#### REGULATIONS ACT

(2) The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

#### SECTIONS 28, 29 AND 33 OF SPPA

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council.

### **SECTION 51.2**

#### USE OF OFFICIAL LANGUAGES OF COURTS

51.2 (1) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

#### Same

(2) Complaints against provincial judges may be made in English or French.

#### Same

- (3) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,
  - (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;
  - (b) to be provided with the assistance of an interpreter at the hearing; and
  - (c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

#### Same

(4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

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### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### BILINGUAL HEARING OR MEDIATION

(5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

#### PART OF HEARING OR MEDIATION

(6) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

#### Same

- (7) In a bilingual hearing or mediation,
- (a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- (b) documents may be filed in either language;
- (c) in the case of a mediation, discussions may take place in either language;
- (d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

#### Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

#### SECTION 51.3

#### COMPLAINTS

51.3 (1) Any person may make a complaint to the Judicial Council alleging misconduct by a provincial judge.

#### Same

(2) If an allegation of misconduct against a provincial judge is made to a member of the Judicial Council, it shall be treated as a complaint made to the Judicial Council.

#### Same

(3) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation

with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

#### CARRIAGE OF MATTER

(4) Once a complaint has been made to the Judicial Council, the Council has carriage of the matter.

#### INFORMATION RE COMPLAINT

(5) At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

### **SECTION 51.4**

#### REVIEW BY SUBCOMMITTEE

51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer.

#### ROTATION OF MEMBERS

(2) The eligible members of the Judicial Council shall all serve on the subcommittee on a rotating basis.

#### DISMISSAL

(3) The subcommittee shall dismiss the complaint without further investigation if, in the subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process.

#### INVESTIGATION

(4) If the complaint is not dismissed under subsection (3), the subcommittee shall conduct such investigation as it considers appropriate.

#### EXPERT ASSISTANCE

(5) The subcommittee may engage persons, including counsel, to assist it in its investigation.

#### INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

#### NON-APPLICATION OF SPPA

(7) The *Statutory Powers Procedure Act* does not apply to the subcommittee's activities.

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## COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### INTERIM RECOMMENDATIONS

(8) The subcommittee may recommend to a regional senior judge the suspension, with pay, of the judge who is the subject of the complaint, or the judge's reassignment to a different location, until the complaint is finally disposed of.

#### Same

(9) The recommendation shall be made to the regional senior judge appointed for the region to which the judge is assigned, unless that regional senior judge is a member of the Judicial Council, in which case the recommendation shall be made to another regional senior judge.

#### POWER OF REGIONAL SENIOR JUDGE

(10) The regional senior judge may suspend or reassign the judge as the subcommittee recommends.

#### DISCRETION

(11) The regional senior judge's discretion to accept or reject the subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice.

## EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Justice of the Ontario Court of Justice, an associate chief justice of the Ontario Court of Justice or the regional senior judge who is a member of the Judicial Council, any recommendation under subsection (8) in connection with the complaint shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the subcommittee recommends.

#### SUBCOMMITTEE'S DECISION

- (13) When its investigation is complete, the subcommittee shall,
- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice;
- (c) refer the complaint to a mediator in accordance with section 51.5; or
- (d) refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6.

#### Same

(14) The subcommittee may dismiss the complaint or refer it to the Chief Justice or to a mediator only if both members agree; otherwise, the complaint shall be referred to the Judicial Council.

### CONDITIONS, REFERENCE TO CHIEF JUSTICE

(15) The subcommittee may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice.

#### REPORT

(16) The subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed or referred to the Chief Justice or to a mediator.

#### POWER OF JUDICIAL COUNCIL

(17) The Judicial Council shall consider the report, in private, and may approve the subcommittee's disposition or may require the subcommittee to refer the complaint to the Council.

#### Same

- (18) The Judicial Council shall consider, in private, every complaint referred to it by the subcommittee, and may,
  - (a) hold a hearing under section 51.6;
  - (b) dismiss the complaint;
  - (c) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection (15); or
  - (d) refer the complaint to a mediator in accordance with section 51.5.

#### NON-APPLICATION OF SPPA

(19) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (17) and (18).

#### NOTICE TO JUDGE AND COMPLAINANT

(20) After making its decision under subsection (17) or (18), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

### GUIDELINES AND RULES OF PROCEDURE

(21) In conducting investigations, in making recommendations under subsection (8) and in making decisions under subsections (13) and (15), the subcommittee shall follow the Judicial Council's guidelines and rules of procedure established under subsection 51.1 (1).

## APPENDIX-D

#### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

#### SECTION 51.5

#### **MEDIATION**

51.5 (1) The Judicial Council may establish a mediation process for complainants and for judges who are the subject of complaints.

#### CRITERIA

(2) If the Judicial Council establishes a mediation process, it must also establish criteria to exclude from the process complaints that are inappropriate for mediation.

#### Same

- (3) Without limiting the generality of subsection (2), the criteria must ensure that complaints are excluded from the mediation process in the following circumstances:
  - 1. There is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable.
  - 2. The complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*.
  - 3. The public interest requires a hearing of the complaint.

#### LEGAL ADVICE

(4) A complaint may be referred to a mediator only if the complainant and the judge consent to the referral, are able to obtain independent legal advice and have had an opportunity to do so.

#### TRAINED MEDIATOR

(5) The mediator shall be a person who has been trained in mediation and who is not a judge, and if the mediation is conducted by two or more persons acting together, at least one of them must meet those requirements.

#### IMPARTIALITY

(6) The mediator shall be impartial.

#### EXCLUSION

(7) No member of the subcommittee that investigated the complaint and no member of the Judicial Council who dealt with the complaint under subsection 51.4 (17) or (18) shall participate in the mediation.

#### REVIEW BY COUNCIL

- (8) The mediator shall report the results of the mediation, without identifying the complainant or the judge who is the subject of the complaint, to the Judicial Council, which shall review the report, in private, and may,
  - (a) approve the disposition of the complaint; or
  - (b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,
    - (i) dismiss the complaint,
    - (ii) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15), or
    - (iii) hold a hearing under section 51.6.

#### REPORT

(9) If the Judicial Council approves the disposition of the complaint, it may make the results of the mediation public, providing a summary of the complaint but not identifying the complainant or the judge.

#### REFERRAL TO COUNCIL

- (10) At any time during or after the mediation, the complainant or the judge may refer the complaint to the Judicial Council, which shall consider the matter, in private, and may,
  - (a) dismiss the complaint;
  - (b) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15); or
  - (c) hold a hearing under section 51.6.

#### NON-APPLICATION OF SPPA

(11) The Statutory Powers Procedure Act does not apply to the Judicial Council's activities under subsections (8) and (10).

## 

## COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

### NOTICE TO JUDGE AND COMPLAINANT

(12) After making its decision under subsection (8) or (10), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

#### GUIDELINES AND RULES OF PROCEDURE

(13) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

### **SECTION 51.6**

#### ADJUDICATION BY COUNCIL

51.6 (1) When the Judicial Council decides to hold a hearing, it shall do so in accordance with this section.

#### APPLICATION OF SPPA

(2) The *Statutory Powers Procedure Act*, except section 4 and subsection 9 (1), applies to the hearing.

#### RULES OF PROCEDURE

(3) The Judicial Council's rules of procedure established under subsection 51.1 (1) apply to the hearing.

## COMMUNICATION RE SUBJECT-MATTER OF HEARING

(4) The members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate.

#### EXCEPTION

(5) Subsection (4) does not preclude the Judicial Council from engaging counsel to assist it in accordance with subsection 49 (21), and in that case the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

#### PARTIES

(6) The Judicial Council shall determine who are the parties to the hearing.

### EXCEPTION, CLOSED HEARING

(7) In exceptional circumstances, if the Judicial Council determines, in accordance with the criteria established under subsection 51.1 (1), that the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

## DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

(8) If the hearing was held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1 (1) that there are exceptional circumstances, order that the judge's name not be disclosed or made public.

### ORDERS PROHIBITING PUBLICATION

(9) If the complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of a complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or witness, as the case may be.

#### PUBLICATION BAN

(10) In exceptional circumstances and in accordance with the criteria established under subsection 51.1 (1), the Judicial Council may make an order prohibiting, pending the disposition of a complaint, the publication of information that might identify the judge who is the subject of the complaint.

### DISPOSITIONS

- (11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,
  - (a) warn the judge;
  - (b) reprimand the judge;
  - (c) order the judge to apologize to the complainant or to any other person;
  - (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
  - (e) suspend the judge with pay, for any period;
  - (f) suspend the judge without pay, but with benefits, for a period up to thirty days; or

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### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

(g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

#### Same

(12) The Judicial Council may adopt any combination of the dispositions set out in clauses (11) (a) to (f).

#### DISABILITY

(13) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

#### APPLICATION OF SUBS. (13)

- (14) Subsection (13) applies if,
- (a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
- (b) the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f).

#### UNDUE HARDSHIP

(15) Subsection (13) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

#### OPPORTUNITY TO PARTICIPATE

(16) The Judicial Council shall not make an order under subsection (13) against a person without ensuring that the person has had an opportunity to participate and make submissions.

#### CROWN BOUND

(17) An order made under subsection (13) binds the Crown.

#### REPORT TO ATTORNEY GENERAL

(18) The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 49 (24), and the Attorney General may make the report public if of the opinion that this would be in the public interest.

#### NON-IDENTIFICATION OF PERSONS

- (19) The following persons shall not be identified in the report:
  - 1. A complainant or witness at whose request an order was made under subsection (9).
  - 2. The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed.

#### CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent.

### **SECTION 51.7**

#### COMPENSATION

51.7 (1) When the Judicial Council has dealt with a complaint against a provincial judge, it shall consider whether the judge should be compensated for his or her costs for legal services incurred in connection with all the steps taken under sections 51.4, 51.5 and 51.6 and this section in relation to the complaint.

## CONSIDERATION OF QUESTION COMBINED WITH HEARING

(2) If the Judicial Council holds a hearing into the complaint, its consideration of the question of compensation shall be combined with the hearing.

## PUBLIC OR PRIVATE CONSIDERATION OF QUESTION

(3) The Judicial Council's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

#### RECOMMENDATION

(4) If the Judicial Council is of the opinion that the judge should be compensated, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

## APPENDIX D

### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### Same

(5) If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount.

#### DISCLOSURE OF NAME

(6) The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the name unless there was a public hearing into the complaint or the Council has otherwise made the judge's name public.

#### AMOUNT OF COMPENSATION

(7) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

#### **PAYMENT**

(8) The Attorney General shall pay compensation to the judge in accordance with the recommendation.

#### **SECTION 51.8**

#### REMOVAL FOR CAUSE

- 51.8 (1) A provincial judge may be removed from office only if,
- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
  - (ii) conduct that is incompatible with the due execution of his or her office, or

(iii) failure to perform the duties of his or her office.

#### TABLING OF RECOMMENDATION

(2) The Attorney General shall table the recommendation in the Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

#### ORDER FOR REMOVAL

(3) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Assembly.

#### APPLICATION

(4) This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved under subsection 47 (3), (4) or (5).

#### TRANSITION

(5) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the *Courts of Justice Statute Law Amendment Act*, 1994 comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this *Act* as it read immediately before that day.

### **SECTION 51.9**

#### STANDARDS OF CONDUCT

51.9 (1) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council.

#### DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council.

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#### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### GOALS

- (3) The following are among the goals that the Chief Justice may seek to achieve by implementing standards of conduct for judges:
  - 1. Recognizing the independence of the judiciary.
  - 2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
  - 3. Enhancing equality and a sense of inclusiveness in the justice system.
  - 4. Ensuring that judges' conduct is consistent with the respect accorded to them.
  - 5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education.

### **SECTION 51.10**

#### CONTINUING EDUCATION

51.10 (1) The Chief Justice of the Ontario Court of Justice shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council.

#### DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council.

#### GOALS

- (3) Continuing education of judges has the following goals:
- 1. Maintaining and developing professional competence.
- 2. Maintaining and developing social awareness.
- 3. Encouraging personal growth.

### **SECTION 51.11**

#### PERFORMANCE EVALUATION

51.11 (1) The Chief Justice of the Ontario Court of Justice may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council.

#### DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council.

#### GOALS

- (3) The following are among the goals that the Chief Justice may seek to achieve by establishing a program of performance evaluation for judges:
  - 1. Enhancing the performance of individual judges and of judges in general.
  - 2. Identifying continuing education needs.
  - 3. Assisting in the assignment of judges.
  - 4. Identifying potential for professional development.

#### SCOPE OF EVALUATION

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

#### CONFIDENTIALITY

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

#### INADMISSIBILITY, EXCEPTION

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

#### APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation.

## APPENDIX-D

### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

### **SECTION 51.12**

#### CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate.

### **SECTION 87**

#### **MASTERS**

87.—(1) Every person who was a master of the Supreme Court before the 1st day of September, 1990 is a master of the Superior Court of Justice.

#### JURISDICTION

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice.

#### APPLICATION OF SS. 44 TO 51.12

(3) Sections 44 to 51.12 apply to masters, with necessary modifications, in the same manner as to provincial judges.

#### **EXCEPTION**

(4) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters.

#### Same

(5) The right of a master to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

#### Same

- (6) When the Judicial Council deals with a complaint against a master, the following special provisions apply:
  - One of the members of the Judicial Council who
    is a provincial judge shall be replaced by a master.
    The Chief Justice of the Ontario Court of Justice
    shall determine which judge is to be replaced
    and the Chief Justice of the Superior Court of

- Justice shall designate the master who is to replace the judge.
- 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
- 3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

#### Same

(7) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to masters only if the Chief Justice of the Superior Court of Justice consents.

#### COMPENSATION

(8) Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the Schedule to this *Act*.

#### **SECTION 87.1**

#### SMALL CLAIMS COURT JUDGES

87.1 (1) This section applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990.

#### FULL AND PART-TIME SERVICE

(2) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to provincial judges to whom this section applies.

#### CONTINUATION IN OFFICE

(3) The right of a provincial judge to whom this section applies to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

## APPENDIX-D

### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### COMPLAINTS

- (4) When the Judicial Council deals with a complaint against a provincial judge to whom this section applies, the following special provisions apply:
  - 1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
  - 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
  - 3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

#### APPLICATION OF SS. 51.9, 51.10, 51.11

(5) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to provincial judges to whom this section applies only if the Chief Justice of the Superior Court of Justice consents.

#### **SECTION 45**

## APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

45. (1) A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order under subsection (2).

#### DUTY OF JUDICIAL COUNCIL

(2) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

#### UNDUE HARDSHIP

(3) Subsection (2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

#### GUIDELINES AND RULES OF PROCEDURE

(4) In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

#### OPPORTUNITY TO PARTICIPATE

(5) The Judicial Council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

#### CROWN BOUND

(6) The order binds the Crown.

### **SECTION 47**

#### RETIREMENT

(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

#### Same

(2) Despite subsection (1), a judge appointed as a full-time magistrate, judge of a juvenile and family court or master before December 2, 1968 shall retire upon attaining the age of seventy years.

### CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years.

#### SAME, REGIONAL SENIOR JUDGES

(4) A regional senior judge of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Justice, continue in that office until his or her term (including any renewal under subsection 42 (9)) expires, or until he or she attains the age of seventy-five years, whichever comes first.

# APPENDIX-D

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

# SAME, CHIEF JUSTICE AND ASSOCIATE CHIEF JUSTICES

(5) A Chief Justice or associate chief justice of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first.

#### Same

(6) If the Judicial Council does not approve a Chief Justice or associate chief justice continuation in that office under subsection (5), his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council and not as set out in subsection (3).

#### CRITERIA

(7) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Justice and approved by the Judicial Council.

#### TRANSITION

(8) If the date of retirement under subsections (1) to (5) falls earlier in the calendar year than the day section 16 of the *Courts of Justice Statute Law Amendment Act*, 1994 comes into force and the annual approval is outstanding on that day, the judge's continuation in office shall be dealt with in accordance with section 44 of this *Act* as it read immediately before that day.

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# APPENDIX-E

# REASONS FOR DECISION

WILLIAM G. RICHARDS

# APPENDIA-E

#### REASONS FOR DECISION

BEFORE

The Honourable DENNIS R. O'CONNOR
Associate Chief Justice of Ontario
Madam Justice P.H. MARJOH AGRO
WILLIAM JAMES
PATRICIA D.S. JACKSON

COUNSEL ANDREW BURNS, Presenting Counsel

J.J. BURKE, Counsel to Mr. JUSTICE W.G.

RICHARDS

### **REASONS FOR DECISION**

This case concerns a complaint that Mr. Justice Richards improperly terminated the trial of a criminal proceeding over which he was presiding. At the conclusion of the hearing of the complaint the panel dismissed the complaint, indicating that its reasons would follow. These are the reasons for our decision.

#### HISTORY OF PROCEEDINGS

The particulars of the complaint as set out in the Notice of Hearing are as follows:

- 1. It is alleged that on July 10, 1998 in Courtroom 124 at Old City Hall in the City of Toronto, the Honourable Mr. Justice William G. Richards ("Mr. Justice Richards") was scheduled to preside over, and did commence the hearing of a matter concerning charges against Mr. Edford Providence of two Counts of Threatening Bodily Harm contrary to *The Criminal Code*.
- 2. Mr. Providence had previously appeared on March 9, 1998 ready for trial, but the trial was postponed due to the failure of the Crown to produce a security videotape to the defence showing Mr. Providence in proximity to the complainant Ms Adilman.
- 3. Mr. Providence was given a new trial date of July 10, 1998.
- 4. At the beginning of the hearing on July 10, 1998, Crown counsel Robin Flumerfelt called as its first witness Ms Anna Adilman, the complainant in respect of the first of the two counts in respect of which Mr. Providence was charged.
- 5. The charges involved, *inter alia*, threats allegedly uttered on July 17, 1997 by Mr. Providence against Ms Adilman at the William Ashley store where Ms Adilman was working as a "greeter".
- 6. After Mr. Flumerfelt finished his examinationin-chief of Ms Adilman, counsel for Mr.

- Providence, Mr. George N. Carter, commenced his cross-examination of Ms Adilman.
- 7. At the beginning of his cross-examination, Mr. Carter indicated that he wished to play a security videotape recorded in the William Ashley store where Ms Adilman was working at the time of the events that led to the charges against Mr. Providence.
- 8. Mr. Justice Richards, on hearing Mr. Carter state that he needed the videotape for his cross-examination of Ms Adilman, remarked that it was "the Crown's videotape" and the Crown chose not to "put it in".
- 9. On hearing Mr. Carter's explanation that he wished to use the tape as part of his cross-examination, Mr. Justice Richards is alleged to have stated "all right. Hook it up and let's see it. I knew this... so, start cross-examining while it's getting hooked up."
- 10. During the cross-examination, Mr. Flumerfelt objected twice that no activity on the videotape was occurring. Mr. Carter continued his cross-examination.
- 11. After the cross-examination had proceeded for some time, at approximately 11:30 a.m., Mr. Justice Richards interrupted Mr. Carter and asked the police officer operating the video equipment to turn off the videotape player.
- 12. After asking that the player be turned off, Mr. Justice Richards is alleged to have spoken the following words: "This matter was marked for a day. I cannot be seized. This is my last day in Toronto. I am not going to hear it. Obviously, I have been acquainted with defence counsel before and he's very thorough and I guarantee I could not finish it today if I heard it... so, I'm going to strike the plea and stop the proceedings and ... move it back to whatever court it came from...

# APPENDIN-I

#### REASONS FOR DECISION

- 13. It is alleged that Mr. Providence was before Mr. Justice Richards for less than half an hour.
- 14. It is alleged that Mr. Justice Richards asked neither the Crown counsel nor Mr. Carter how many witnesses either intended to call, and heard to substantive submissions before making his decision to terminate the proceedings.
- 15. The above-noted conduct is incompatible with the due execution of the duties of the Honourable Mr. Justice William G. Richards.

The complaint was submitted by Mr. Providence and his counsel, Mr. Carter. Pursuant to ss.51.4(18) and 51.6 of the *Courts of Justice Act* (the "Act"), the Ontario Judicial Council (the "Council") directed the complaint to be heard by a panel of the Council. By virtue of the Council's procedures, established pursuant to the Act, a complaint is referred to hearing where there has been an allegation of judicial misconduct which has a basis in fact which, if believed by the finder of fact, could result in a finding of judicial misconduct. Such hearing is conducted by a panel established pursuant to s.49(16) and (17) of the Act.

Pursuant to ss.49.11 and 51.6(7) of the *Act*, Judicial Council hearings into complaints are open to the public unless the panel determines in accordance with criteria established under s.51.1(1) of the Act that exceptional circumstances exist and the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. There was no suggestion of exceptional circumstances in this case. The hearing was therefore conducted in public.

#### THE FACTS

Mr. Justice Richards accepted the particulars set out above as substantially correct. The transcript of the proceedings before Mr. Justice Richards on July 10th was also filed in evidence, and confirms the particulars of the complaint.

Mr. Justice Richards' counsel outlined further facts relevant to the events surrounding the complaint. Those facts were not contested, and we accept them as correct.

Mr. Justice Richards sits as a *per diem* judge. That is to say he has retired, but pursuant to an Order-in-Council is authorized to sit as a judge and be paid, on a *per diem* basis, for a fixed number of days in the year. He is not permanently assigned to any jurisdiction. His assignments are controlled by a central administrator.

On the day in question he had been assigned to sit for one day only at Old City Hall. By mid-morning, he had completed the list of matters scheduled to be heard by him. He therefore asked if there were other matters, which he understood would be guilty pleas or other short matters, with which he could deal. The request for short matters was due to the fact that he was only sitting at Old City Hall for one day. It was also in accordance with the general instruction to *per diem* judges not to take on trials because there is no assurance of being able to complete them in the scheduled one day attendance.

Mr. Justice Richards' request for additional matters is consistent with his record as a judge who works hard, and one who effectively and efficiently deals with backlogs and guilty pleas. He is described by the local administrative justice in Brampton, Mr. Justice Cowan, in a letter filed as an exhibit in the following terms:

Throughout all my years of knowing Judge Richards he has been and continues to be one of the hardest working, fairest judges that I know. This opinion is shared by a large number of counsel and his fellow judges.

From a defence counsel's point of view they love to appear in front of him. He gets to the issues quickly, recognizes what the crux of the case is and deals with it in a fair and efficient manner.

On a daily basis we set 30 day hours per day of trial. I particularly appreciate the amount of work that he does because I know that he is not in good health and sometimes comes to court motivated only by the love of the job that he does so well.

When the Providence matter was brought before him on the morning in question Mr. Justice Richards did not make any inquiries before commencing the trial about the complexity or potential length of the matter, nor did he observe from the information that the matter was marked for a one day trial.

After the proceedings got underway, he realized that it was neither a guilty plea nor a similarly short matter. He observed, for the first time, the notation on the information that the matter was scheduled for a one day trial. The implication of counsel's outline of the facts is that Mr. Justice Richards judged from his experience with defence counsel that if there was more than one witness the case was likely to last two or three days. Because he was only

# APPENDIX-E

#### REASONS FOR DECISION

scheduled to be at City Hall on that day and was not scheduled to return, Mr. Justice Richards realized that to allow the trial to continue would lead to an inevitable, and potentially very substantial delay. Without hearing from counsel, he suspended the proceedings and directed the matter to be re-assigned.

Mr. Justice Richards acknowledged that he was in error in commencing the trial, without making inquiries which would satisfy him about the length of the matter, and then terminating it. He explained that his actions were motivated by a desire to "move a list in overcrowded, understaffed courts". He acknowledged that "[moving] the list ... may appear to the public along with the administration of justice to overshadow the appearance of justice". He acknowledged that this was wrong and apologized.

#### THE ISSUE

The sole issue in this case is whether Mr. Justice Richards' conduct constitutes misconduct within the meaning of s.51.6(11) of the *Act*. That section provides:

51.6(11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge may,

- (a) warn the judge;
- (b) reprimand the judge;
- (c) order the judge to apologize to the complainant or to any other person;
- (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
- (e) suspend the judge with pay, for any period;
- (f) suspend the judge without pay, but with benefits, for a period up to 30 days; or
- (g) recommend to the Attorney General that the judge be removed from office in accordance with s.51.8.

Presenting Counsel submits that the conduct of Mr. Justice Richards, in striking the plea, apparently for reasons of his own administrative convenience and expressed antipathy towards defence counsel, could affect the reputation of the administration of justice so as to amount to judicial misconduct pursuant to s.51.6(11) of the *Act*.

#### ANALYSIS

The terms of s.51.6(11) of the *Act* evince a clear intention by the Legislature that judicial misconduct may embrace a wide spectrum of conduct. Before the 1995 amendments to the *Act*, the Judicial Council was charged with the investigation of complaints against provincial judges but could dispose of them only by referring them to the Chief Judge, by recommending an inquiry into the question of whether the judge should be removed from office, or by recommending the judge be compensated for the costs of the investigation.

The current *Act* clearly contemplates the concept of judicial misconduct, and that such misconduct may include conduct of a more minor nature (meriting a warning or a reprimand), to conduct of the most extreme seriousness, meriting a removal from office. It is evident from the legislation that the intention is that judicial misconduct is not limited to actions warranting removal from office.

The Supreme Court of Canada has recently considered the issue of judicial misconduct in its determination of the standard of review applicable to a decision by the New Brunswick Judicial Council in Moreau-Bérubè v. New Brunswick (Judicial Council), [2002] S.C.J. No. 9. The New Brunswick statutory regime there under consideration is similar to the one governing these proceedings. The New Brunswick Judicial Council is charged with review of allegations of judicial misconduct, neglect of duty or inability to perform the duties, and may dispose of such complaints through dismissal, a reprimand with conditions, or a recommendation of removal from office. The issue before the Judicial Council in the Moreau-Bérubè case was whether the judge's derogatory comments about Acadians made while presiding over a sentencing hearing amounted to an abuse of judicial independence such as to attract discipline. The Supreme Court of Canada described those cases which would attract a disciplinary process at paragraph 58:

In some cases, however, the actions and expressions of an individual judge trigger concerns about the integrity of the judicial function itself. When a disciplinary process is launched to look at the conduct of an individual judge, it is alleged that an abuse of judicial independence by a judge has threatened the integrity of the judiciary as a whole. The harm alleged is not curable by the appeal process.

In a recent decision of this Council, the panel considered the Supreme Court of Canada's decision in *Moreau-Bérubè* 

# APPLINDIALE

### REASONS FOR DECISION

as well as its decision in *Therrien v. Minister of Justice et al.* (2001), 155 C.C.C. (3d) 1 and described the test under s.51.6(11) as follows:

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s.51.6(1) should be invoked, when necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

Paraphrasing the test set out by the Supreme Court in Therrien and Moreau-Bérubè, the question under s.51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore confidence.

In this case there is no question that Mr. Justice Richards had become seized of the criminal trial when he began hearing evidence, and that his decision to terminate the trial without hearing from counsel was in error. Mr. Justice Richards concedes this, and in effect concedes that his conduct fell below the standard expected of a judge in those circumstances.

In general, a decision to terminate a trial which has already begun on the basis of personal or administrative concerns would bring the administration of justice into disrepute and could amount to judicial misconduct. The result is the inevitable delaying of the trial, with attendant prejudice, as well as the substantial inconvenience to the accused, and those witnesses in attendance. In most circumstances, such a decision would increase the likelihood that the accused's s.11(b) rights under the *Charter* had been violated. This is particularly so in a case, such as this one, where the trial had already been postponed because of the Crown's failure to produce apparently relevant evidence.

In our view, however, this case is an exception to the general rule. When we consider all of the facts, we are of the view that Justice Richards' conduct falls short of constituting judicial misconduct. There are a number of reasons:

1. The judge is known for his diligence. His reputation is not only that he does not avoid work, he seeks it out. He offered to take more cases that day.

- 2. The judge did not realize that the case was scheduled for more than one day when he started the trial.
- 3. The judge's assessment was that this counsel often caused cases to take more rather than less time.
- 4. The judge was a *per diem* judge, and as a matter of administration was not likely to be available for a considerable period of time perhaps causing a longer delay than if he aborted the trial
- 5. The case would not have been reached in the other court in which it was originally scheduled.
- 6. The judge has been on the court for 25 years with an unsullied reputation. Indeed, his reputation is that of a diligent and hard working judge.
- 7. The judge demonstrated a clear understanding of the significance of his error in this case. His apology was sincere.
- 8. The dispositions in s.51.6(11) are in general prospective, not punitive. It is highly improbable that this judge would make the same kind of mistake again. (We do not, in making this observation, consider that the need to address the possibility of future misconduct is a *sine qua non* for a finding of judicial misconduct.)
- 9. The judge's conduct did constitute an error in judgement. He should have addressed the issue of the length of the trial before it started and once he decided to address it he should have asked counsel how long it was likely to take. However, a reasonable member of the public knowing all of the relevant facts would not view this as more than an error in judgement.

For all of these reasons, we consider that this admitted error in judgement falls short of constituting judicial misconduct. We therefore dismiss the complaint.

#### REASONS FOR DECISION

#### COMPENSATION

Madam Justice Agro is a member and director of the Ontario Conference of Judges. The conference has a compensation fund for judges who appear before the Judicial Council. Accordingly, Madam Justice Agro recused herself from this portion of the decision.

Section 51.7(5) of the *Act* requires that in circumstances where a complaint is dismissed the Judicial Council must recommend to the Attorney General that the judge be compensated for the costs of legal services and must indicate the amount. Pursuant to s.51.7(7) the amount of the compensation may relate to all or a portion of the judge's costs for legal services and must be based on a rate which does not exceed the maximum rate normally paid for legal services by the Government of Ontario. In this case, counsel made a joint recommendation for costs in the amount of \$3,000. It is evident from the hearing itself and the information provided to us that this is a substantial reduction from the amount that could be awarded. While we have concluded that there was no judicial misconduct, we are of the view that there was an error in judgement. The case was certainly an appropriate one to be brought forward to a hearing.

In all of the circumstances, we recommend to the Attorney General that Mr. Justice Richards be compensated for his legal costs in the amount of \$3,000.

DATED at the City of Toronto, in the Province of Ontario, June 7th, 2002.

Associate Chief Justice DENNIS R. O'CONNOR Madam Justice P. H. MARJOH AGRO WILLIAM JAMES PATRICIA D. S. JACKSON

# ANNEXE - « E »

# MOTIFS DE LA DECISION

#### INDEMNISATION

Madame la juge Agro est membre et directrice de l'Ontario Conference of Judges. Cet organisme prévoit un fonds d'indemnisation pour les juges qui paraissent devant le Conseil de la magistrature. Par conséquent, Madame la juge Agro s'est récusée de cette portion de la décision.

cause. d'une audience était certainement appropriée dans cette sommes d'avis qu'il y a eu erreur de jugement. La tenue conclu qu'il n'y pas eu d'inconduite judiciaire, nous à celui qui aurait pu être accordé. Bien que nous ayons été fournie, que ce montant est considérablement inférieur d'après l'audience elle-même et l'information qui nous a conjointement des trais de 3 000 dollars. Il est évident, Dans la présente cause, les avocats ont recommandé gouvernement de l'Ontario pour des services similaires. ne dépasse pas le taux maximal normalement prévu par le doit être calculé selon un taux pour services juridiques qui tout ou partie des frais pour services juridiques du juge et 51.7 (7), le montant de l'indemnité peut se rapporter à quer le montant de l'indemnité. Conformément à l'article indemnisé pour ses trais pour services juridiques et indirecommander au procureur général que le juge soit à l'issue d'une audience, le Conseil de la magistrature doit Selon l'article 51.7 (5) de la Loi, si une plainte est rejetée

Dans toutes les circonstances, nous recommandons au procureur général que Monsieur le juge Richards soit indemnisé de ses frais juridiques pour un montant de 3 000 dollars.

DATÉ à Toronto, dans la province de l'Ontario, le 7 juin 2002.

Monsieur le juge en chef adjoint DENNIS R. O'CONNOR Wadame la juge P. H. MARJOH AGRO WILLIAM JAMES

# MOTIFS DE LA DÉCISION

une inconduite judiciaire. Il y a plusieurs raisons: la conduite de Monsieur le juge Richards ne constitue pas règle. En examinant tous les faits, nous sommes d'avis que Selon nous, cependant, cette cause est une exception à la

grand nombre de causes ce jour-là. pour le rechercher. Il a offert de traiter un plus non seulement pour ne pas éviter le travail, mais Le juge est reconnu pour sa diligence. Il est réputé

d'amorcer le procès qu'on avait prévu plus d'une Le juge ne s'est pas rendu compte avant

dance à retarder les causes plutôt qu'à les accélérer. Le juge avait déterminé que cet avocat avait tenjournée pour la cause.

de temps – ce qui aurait peut-être retardé le blement pas disponible pour une longue période d'un point de vue administratif, ne serait proba-Le juge était mandaté sur une base journalière et,

procès davantage qu'une interruption.

où elle devait originellement être entendue. On n'aurait pas encore atteint la cause au tribunal

diligent et travailleur. tation est intacte. Certes, il est réputé pour être -ugàr es 19 ene 22 siugab lenudiri ue agáis agul aL

portée de son erreur dans cette affaire. Ses excuses Le juge a démontré qu'il comprenait clairement la

nouveau le même genre d'erreur. (En faisant cette très peu probable que ce juge commettra de généralement potentielles et non punitives. Il est Les dispositions de l'article 51.6 (11) sont étaient sincères.

a inconduite judiciaire.) une condition sine qua non pour conclure qu'il y d'envisager la possibilité d'inconduite future est observation, nous n'estimons pas que la nécessité

de jugement. erait pas cela comme autre chose qu'une erreur connaissant tous les faits pertinents ne considér-Cependant, un membre raisonnable du public aux avocats d'estimer la durée du procès. avoir décidé de l'examiner, il aurait dû demander durée du procès avant de commencer et, après jugement. Il aurait dû examiner la question de la La conduite du juge a constitué une erreur de

judiciaire. Par conséquent, nous rejetons la plainte. de jugement reconnue ne constitue pas une inconduite Pour tous ces motifs, nous estimons que cette erreur

> remédier au préjudice allégué. dans son ensemble. Le processus d'appel ne peut pas judiciaire par ce juge menace l'intégrité de la magistrature existe une allégation selon laquelle l'abus de l'indépendance

(11) 6.16 slarticle de l'article 51.6 (11) Therrien v. Minister of Justice et al. (2001), 155 C.C.C. cause Moreau-Bérubé ainsi que sa décision dans la cause iné la décision de la Cour suprême du Canada dans la Dans une récente décision de ce Conseil, le comité a exam-

: jins ammoa

judiciaire en cause. perte de confiance du public découlant de la conduite (I) devraient être invoquées si nécessaire pour rétablir la tiellement réparateur. Les dispositions de l'article 51.6 Lobjectif des instances d'inconduite judiciaire est essen-

est fait mention dans l'article pour rétablir la confiance. magistrature de prendre une des dispositions auxquelles il de la justice en général et s'il incombe au Conseil de la quitter de ses sonctions de sa charge ou l'administration la population à l'égard de la capacité du juge de s'acde la justice qu'elle ébranle suffisamment la confiance de aux notions d'impartialité, d'intégrité et d'indépendance reprochée porte si manifestement et si totalement atteinte termes de l'article 51.6 (11) est de savoir si la conduite causes Therrien et Moreau-Bérubé, la question aux Paraphrasant le test établi par la Cour suprême dans les

dues d'un juge dans ces circonstances. en effet, que sa conduite n'a pas respecté les normes attenerronée. Monsieur le juge Richards a admis cela et admet, de mettre fin au procès avant de consulter les avocats était où il a commencé à entendre la preuve, et que sa décision le juge Richards était saisi du procès criminel au moment Dans la présente cause, il n'y a pas de doute que Monsieur

apparemment pertinentes. parce que la Couronne n'a pas pu produire des preuves une cause comme celle-ci où le procès a déjà été repoussé Charte et cette probabilité est d'autant plus grande dans aux droits de l'accusé en vertu de l'article 11 (b) de la une telle décision rehausserait la probabilité d'enfreinte l'accusé et les témoins présents. Dans la majorité des cas, concomitant, ainsi que des inconvénients majeurs pour résulte un report inévitable du procès, et un préjudice et pourrait constituer une inconduite judiciaire. Il en administratif déconsidérerait l'administration de la justice fondée sur des préoccupations d'ordre personnel ou En général, une décision d'interrompre un procès en cours

F-4 **VPPENDIX** 

L'avocat de présentation soutient que lorsqu'il a radié la plainte apparemment pour des moitis de commodité administrative et a exprimé son antipathie à l'égard de l'avocat de la défense, Monsieur le juge Richards a adopté une conduite qui pourrait affecter la réputation de l'administration de la justice et partant constituer une inconduite judiciaire en vertu de l'article 51.6 (11) de la Loi.

#### **VALUE**

Le libellé de l'article 51.6 (11) de la Loi manifeste l'intention claire du corps législatif de faire en sorte que l'inconduite judiciaire englobe un vaste éventail de conduite. Avant les amendements de 1995 à la Loi, le Conseil de la législature était responsable d'enquêter sur les plaintes portées contre les juges provinciaux mais pouvait statuer sur les plaintes uniquement en les renvoyant au juge en chef, en recommandant une enquête sur la question de savoir si le juge devait être démis de ses fonctions, ou en recommandant que le juge soit indemnisé des frais de l'enquête.

La Loi actuelle examine clairement le concept d'inconduite judiciaire laquelle peut comprendre aussi bien une réprimande) mineure (méritant un avertissement ou une réprimande) qu'une conduite très grave, méritant une révocation.

qui mériteraient un processus disciplinaire à l'article 58: disciplinaire. La Cour suprême du Canada a décrit les causes l'indépendance judiciaire suffisant pour méniter une sanction mination de la peine constituaient un abus de sule acadienne alors qu'elle présidait une audience de déterdésobligeants de la juge au sujet des résidants de la pénin-Moreau-Bérubé était de savoir si les commentaires question devant le Conseil de la magistrature dans l'affaire une réprimande avec conditions ou une révocation. La statuer sur ces plaintes en recommandant une destitution, au devoir et d'incapacité d'assumer les fonctions et peut iner les allégations d'inconduite judiciaire, de manquement la magistrature du Nouveau-Brunswick est chargé d'examest semblable à celui qui régit cette instance. Le Conseil de 9. Le régime statutaire du Nouveau-Brunswick envisagé Brunswick (Conseil de la magistrature), [2002] S.C.J. no Brunswick dans la cause Moreau-Bérubé c. New prise par le Conseil de la magistrature du Nouveaunorme de contrôle judiciaire applicable à une décision question de l'inconduite judiciaire dans sa décision sur la La Cour suprême du Canada a récemment examiné la

Dans certains cas, cependant, les actes et les paroles d'un juge sèment le doute quant à l'intégrité de la fonction judiciaire elle-même. Lorsqu'on entreprend une enquête disciplinaire pour examiner la conduite d'un juge, il

note indiquant qu'une journée avait été prévue pour le procès. Les faits décrits par l'avocat suggèrent que annérieure avec l'avocat de la défense que dans l'éventualité où plus d'un témoin serait appelé à témoigner la cause durerait probablement deux ou trois jours. Étant donné et ne devait pas revenir, Monsieur le juge Richards s'est rendu compte que la poursuite du procès mènerait à un délai inévitable et potentiellement très long. Sans demandella inévitable et potentiellement très long. Sans demander l'avis des avocats, il a donc interrompu le procès et der l'avis des avocats, il a donc interrompu le procès et de l'avis de la réaffectation de l'allaire.

Monsieur le juge Richards a reconnu qu'il avait commis une erreur en commençant le procès sans poser les questions qui lui auraient permis de juger la durée du procès et en interrompant celui-ci. Il a expliqué que ses actions avaient été motivées par un désir de « faire avancer une liste dans des tribunaux surpeuplés manquant de personnel ». Il a reconnu que « le fait de faire avancer la liste ... pouvait aux yeux du public et de l'administration de la justice sembler éclipset l'apparence de justice ». Il a reconnu son erreur et a présenté ses excuses.

#### LA QUESTION

La seule question en cause dans cette affaire est de savoir si la conduite de Monsieur le juge Richards constitue une inconduite au sens de l'article 51.6 (11) de la Loi. Cet article stipule ce qui suit :

51.6 (11) Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclut qu'il y a non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconduite de la part du juge, il peut, selon le cas

- a) donner un avertissement au juge;
- b) réprimander le juge;

male de trente jours;

- plaignant ou à toute autre personne;
- d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de sièger à titre de juge;
- e) suspendre le juge, avec rémunération, pendant une période qu'elle qu'elle soit;
- suspendre le juge, sans rémunération mais avec avantages sociaux, pendant une période maxi-
- g) recommander au procureur général la destitution du juge conformément à l'article 51.8.

Monsieur le juge Richards est juge mandaté sur une base journalière, c'est-à-dire qu'il est retraité mais qu'en vertu d'un décret en conseil, il est autorisé à sièger en tant que juge et à recevoir des honoraires journaliers pour un nombre fixe de jours durant l'année. Il n'est pas affecté en permanence à une compétence particulière et un administrateur central contrôle ses affectations.

Le jour en question, il avait été affecté pour une seule journée à l'ancien hôtel de ville. Au milieu de la matinée, ayant terminé la liste des affaires qu'il devait entendre, il a demandé s'il y avait d'autres affaires, notamment des plaidoyers de culpabilité ou d'autres affaires brèves, qu'il pouvait traiter. Il avait demandé des affaires brèves parce qu'il ne devait siéger à l'ancien hôtel de ville qu'une journée. Il se conformait également à la directive générale s'appliquant aux juges mandatés sur une base journalière de ne pas entreprendre de procès parce que rien ne garantit du'ils seront terminés le jour même.

La demande de Monsieur le juge Richards concernant des affaires supplémentaires est conforme à ses antécédents de juge travaillant, qui traite les arriérés et les plaidoyers de culpabilité efficacement et effectivement. Le juge administratif local de Brampton, Monsieur le juge Cowan, le décrit ainsi dans une lettre déposée à titre de preuve :

Pendant toutes les années où j'ai connu le juge Richards il a été et continue d'être un des juges les plus travaillants et équitables que je connaisse. Nombre d'avocats et ses collègues partagent cette opinion.666

Les avocats de la défense aiment paraître devant lui. Il aborde les questions rapidement, reconnaît le fonds de la cause et la traite d'une manière juste et efficace.

Nous prévoyons habituellement 30 heures par jour pour chaque journée du procés. J'apprécie tout particulièrement la quantité de travail qu'il abat parce que je sais qu'il est en mauvaise santé et qu'il se rend parfois au tribunal uniquement par amour de ce travail qu'il fait si bien.

Lorsque la cause Providence a été portée devant lui le matin en question, Monsieur le juge Richards n'a pas posé de question sur la complexité ni la durée éventuelle de l'affaire avant de commencer et n'a pas remarqué en lisant l'information qu'une journée avait été prévue pour le procès.

Après le début du procès, il s'est rendu compte qu'il ne s'agissait ni d'un plaidoyer de culpabilité ni d'une brève affaire semblable et a remarqué, pour une première fois, la

Je suis persuadé que Je ne pourrais pas terminer aujourd'hui si Je l'entendais... par conséquent, Je vais radier la plainte et interrompre la poursuite et... la renvoyer devant le tribunal d'origine... »

13. Il est prétendu que M. Providence est resté devant Monsieur le juge Richards moins d'une demi-heure.

14. Il est prétendu que Monsieur le juge Richards n'a pas demandé à l'avocat de la Couronne ni à M. Carter combien de témoins ils entendaient convoquer et qu'il a entendu deux longs arguments avant de décider d'interrompre la poursuite.

15. La conduite susmentionnée est incompatible avec l'exécution convenable des fonctions de l'honorable juge William G. Richards.

La plainte a été présentée par M. Providence et son avocat, M. Carter. En vertu des articles 51.4 (18) et 51.6 de la Loi sur les tribunaux judiciaires (la « Loi » ), le Conseil de la magistrature de l'Ontario (le « Conseil ») a ordonné à un comité du Conseil d'entendre la plainte. Conformément aux procédures du Conseil, établies en vertu de la Loi, une plainte est renvoyée à une audience lorsqu'il y a eu allégation d'une inconduite judiciaire ayant un fondement allégation d'une inconduite judiciaire. Une telle audience en fait qui, s'il est accepté par le juge des faits, peut mener à une constatation d'inconduite judiciaire. Une telle audience est menée par un comité établi en vertu des articles que (16) et (17) de la Loi.

En vertu des articles 49.11 et 51.6 (7) de la Loi, les audiences sur des plaintes du Conseil de la magistrature sont ouvertes au public à moins que le comité ne détermine conformément aux critères énoncés à l'article 51.1 (1) de la Loi que des circonstances exceptionnelles existent et que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique. Personne n'à suggéré la présence de circonstances exceptionnelles dans la présente affaire. Par conséquent, l'audience a cu lieu en public.

#### LES FAITS

Monsieur le juge Richards a convenu que les détails susmentionnés étaient substantiellement corrects. La transcription des débats tenus devant Monsieur le juge Richards le 10 juillet a été déposée en preuve et confirme le détail de la plainte.

Lavocat de Monsieur le juge Richards a décrit d'autres faits applicables aux événements qui entourent la plainte. Ces faits n'ont pas été contestés et nous acceptons leur véracité.

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WILLIAM JAMES Madame la juge PH. MARJOH AGRO Juge en chef adjoint de l'Ontario Lhonorable Dennis R. O'CONNOR

contre-interroger Mme Adilman. Providence, M. George W. Carter, a commencé à Adilman par M. Flumerfelt, l'avocat de M. A l'issue de l'interrogatoire principal de Mme

J.J. BURKE, avocat de Monsieur le juge ANDREW BURNS, avocat de présentation

JUSTICE W.G. RICHARDS

M. Providence. ments qui ont mené aux accusations contre travaillait au moment où ont eu lieu les événemagasin William Ashley où Mme Adilman une vidéocassette de sécurité enregistrée dans le Carter a déclaré qu'il souhaitait visionner Au début de son contre-interrogatoire, M.

Ta communiquer Couronne et que celle-ci avait décidé de ne pas a affirmé qu'il s'agissait de la vidéocassette de la roger Mme Adilman, Monsieur le juge Richards besoin de la vidéocassette pour contre-inter-Après que M. Carter eut déclaré qu'il avait

pendant qu'on l'installe. » bon, commencez votre contre-interrogatoire la et nous allons la regarder. Je savais que cela... est présumé avoir déclaré : « D'accord. Installezcontre-interrogatoire, Monsieur le juge Richards utiliser la vidéocassette dans le cadre de son Après que M. Carter eut expliqué qu'il désirait

contre-interrogatoire. sur la vidéocassette. M. Carter a poursuivi son s'est opposé deux fois à ce qu'il ne se passait rien Durant le contre-interrogatoire, M. Flumerfelt

bande magnétoscopique. l'équipement vidéo d'éteindre le lecteur de demandé à l'agent de police qui s'occupait de le juge Richards a interrompu M. Carter et a quelque temps, puis à 11 h 30 environ, Monsieur Le contre-interrogatoire s'est poursuivi pendant

l'avocat de la défense et il est très consciencieux et l'entendre. De toute évidence, j'ai déjà traité avec Cest ma dernière journée à Toronto. Je ne vais pas une journée pour cette affaire. Je ne peux être saisi. prononcé les paroles suivants : « On avait prévu Monsieur le juge Richards est censé avoir Après avoir demandé que l'on éteigne l'appareil,

# MOTIFS DE LA DÉCISION

PATRICIA D.S. JACKSON

ses raisons suivraient. Voici les motifs de notre décision. plainte, le comité saisi de l'affaire l'a rejetée, précisant que poursuite criminelle qu'il présidait. Après avoir entendu la le juge Richards alléguant qu'il a mis fin abusivement à une Cette cause porte sur une plainte portee contre Monsieur

#### ANTECEDENTS DE LA POURSUITE

: sinavius est inos Les détails de la plainte tels qu'énoncés dans l'avis d'audience

contrairement au Code criminel. cusation de menaces de préjudice corporel Providence pour avoir commis deux chefs d'acdes accusations portées contre M. Edford et a amorcé l'audition d'une affaire concernant (« Monsieur le juge Richards ») devait présider Toronto, l'honorable juge William G. Richards d'audience 124 de l'ancien hôtel de ville de Il est allégué que le 10 juillet 1998, dans la salle

Providence à proximité de la plaignante, Mme vidéocassette de sécurité montrant M. Couronne n'avait pu fournir à la défense une dernier avait été repoussé parce que la mars 1998 pour subir son procès, mais ce M. Providence avait précédemment paru le 9

été fixée au 10 juillet 1998. La nouvelle date du procès de M. Providence a Ξ.

contre M. Providence. plaignante au regard du premier chef d'accusation comme premier témoin Mme Anna Adilman, la cat de la Couronne Robin Flumerfelt a convoqué Au début de l'audience du 10 juillet 1998, l'avo-

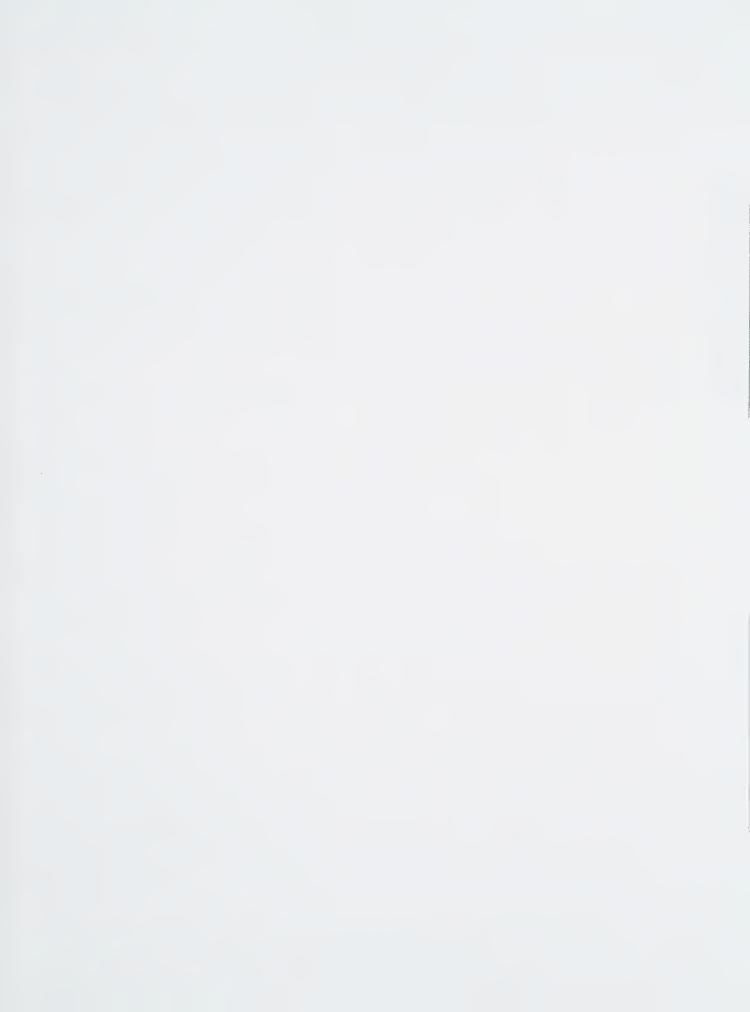
préposée à l'accueil. William Ashley où celle-ci travaillait comme Providence contre Mme Adilman au magasin censément proférées le 17 juillet 1997 par M. Laccusation portait, inter alia, sur des menaces

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.2

# **VUNEXE** «E»

CONSEIL DE LA MAGISTRATURE DE L'ONTARIO DANS L'AFFAIRE D'UNE PLAINTE CONCERNANT L'HONORABLE JUGE WILLIAM G. RICHARDS



ou jusqu'à l'âge de soixante-quinze ans, selon celui de ces (y compris le renouvellement prévu au paragraphe 42 (9) d'exercet ses fonctions jusqu'à l'expiration de son mandat

deux événements qui se produit en premier.

EN CHEF ADJOINTS IDEM, JUGE EN CHEF ET JUGES

qui se produit en premier. soixante-quinze ans, selon celui de ces deux événements jusqu'à l'expiration de son mandat ou jusqu'à l'âge de Conseil de la magistrature, continuer d'exercer ses fonctions l'âge de la retraite peut, avec l'approbation annuelle du Cour de justice de l'Ontario qui est toujours en fonction à 47 (5) Le juge en chef ou le juge en chef adjoint de la

(6) Si le Conseil de la magistrature n'approuve pas le Idem

pas comme l'énonce le paragraphe (3), continuer d'exercer avec l'approbation du Conseil de la magistrature et non chef adjoint aux termes du paragraphe (5), celui-ci peut, maintien en fonction d'un juge en chef ou d'un juge en

les fonctions de juge provincial.

juge en chef et approuvés par le Conseil de la magistrature. et (6) sont prises conformément aux critères établis par le (7) Les décisions visées aux paragraphes (3), (4), (5)

du juge est traité conformément à l'article 44 de la présente annuelle est en suspens ce jour-là, le maintien en fonction en ce qui concerne les tribunaux judiciaires et que l'approbation en vigueur de l'article 16 de la Loi de 1994 modifiant des lois à (5) est antérieure, dans l'année civile, au jour de l'entrée (8) Si la date de la retraite prévue aux paragraphes (1)

loi tel qu'il existait immédiatement avant ce jour-là.

(4) Le juge principal régional de la Cour de justice de

peut, avec l'approbation annuelle du juge en chef, continuer l'Ontario qui est toujours en fonction à l'âge de la retraite

IDEM, JUGES PRINCIPAUX RÉGIONAUX

soixante-quinze ans.

sorxante-cinq ans.

**VELICLE 47** 

PARTICIPATION

s'il y en a.

(6) Lordonnance lie la Couronne.

de participer et de présenter des observations.

personne sans avoir fait en sorte que celle-ci ait eu l'occasion

d'ordonnance aux termes du paragraphe (2) qui vise une

directives et aux règles de procédure qu'il a établies aux

article, le Conseil de la magistrature se conforme aux

s'il y en a, et des exigences en matière de santé et de sécurité,

compte tenu du coût, des sources extérieures de financement,

à qui il incombe de tenir compte des besoins du juge, ordonnance causerait un préjudice injustifié à la personne

de la magistrature est convaincu que le fait de rendre une

(5) Le paragraphe (2) ne s'applique pas si le Conseil

DIRECTIVES ET RÈGLES DE PROCÉDURE

(4) Lorsqu'il traite des requêtes prévues au présent

(5) Le Conseil de la magistrature ne doit pas rendre

LA COURONNE EST LIÉE

([) [.[] stragraphe 5].] (]).

PRÉJUDICE INJUSTIFIÉ

RETRAITE

juge à plein temps ou à temps partiel jusqu'à l'âge de de l'Ontario, continuer d'exercer ses fonctions en tant que l'approbation annuelle du juge en chef de la Cour de justice (3) Le juge qui atteint l'âge de la retraite peut, avec

# WYINLIEN EN FONCTION DES JUGES

prend sa retraite à l'âge de soixante-dix ans. ou protonotaire à plein temps avant le 2 décembre 1968

magistrat, juge d'un tribunal de la famille et de la jeuness (2) Malgré le paragraphe (1), le juge qui a été nommé

Idem

(I) Chaque juge provincial prend sa retraite à l'âge de

LOI SUR LES TRIBUNAUX JUDICIAIRES - CHAPITRE C.43 - CONSEIL DE LA MAGISTRATURE

VAME X E UD \*\*

**CRITERES** 

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- Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un juge provincial est remplacé par un juge provincial qui a été affecté à la Cour provinciale (Division civile) immédiatement avant le let septembre 1990. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le juge qui doit remplacer ce juge.
- Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.
- Les recommandations du sous-comité concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure justice, à qui les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations (10) et (11) s'appliquent avec les adaptations

#### APPLICATION DES ART. 51.9, 51.10 ET 51.11

(5) Earticle 51.9, qui porte sur les normes de conduite des juges provinciaux, l'article 51.10, qui porte sur la formation continue de ces derniers, et l'article 51.11, qui porte sur l'évaluation de leur rendement, ne s'appliquent aux juges provinciaux à qui s'applique le présent article que si le juge en chef de la Cour supérieure de justice y consent. Voir :

necessaires.

# VELICLE 45

REQUÊTE

45 (1) Le juge provincial qui croit ne pas être en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins peut présenter une requête au Conseil de la magistrature pour que soit rendue l'ordonnance prévue au paragraphe (2).

#### OBLIGATION DU CONSEIL DE LA MAGISTRATURE

(2) S'il conclut que le juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

- Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.
- Les recommandations du sous-comité au sujet de la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, auquel les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

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- (7) Larticle 51.9, qui traite des normes de conduite des juges provinciaux, l'article 51.10, qui traite de l'eur formation continue, et l'article 51.11, qui traite de l'évaluation de l'eur rendement, ne s'appliquent aux protonotaires que si le juge en chef de la Cour supérieure de justice y consent.
- (8) Les protonotaires reçoivent les mêmes traitements, prestations de retraite et autres avantages sociaux et allocations que les juges provinciaux reçoivent aux termes de la convention cadre enoncee à l'annexe de la presente loi.

# ARTICLE 87.1

# JUGES DE LA COUR DES PETITES CRÉANCES

87.1 (1) Le présent article s'applique aux juges provinciaux qui ont été affectés à la Cour provinciale (Division civile) immédiatement avant le ler septembre 1990.

(2) Le juge en chef de la Cour supérieure de justice exerce, à l'égard des juges provinciaux à qui s'applique le présent article, le pouvoir du juge en chef de la Cour de justice de l'Ontario qui est prévu aux paragraphes 44 (1) et (2).

#### MAINTIEN EN FONCTION

(3) Le droit d'un juge provincial à qui s'applique le présent article de continuer d'exercer ses fonctions en vertu du paragraphe 47 (3) est assujetti à l'approbation du juge en chef de la Cour supérieure de justice, qui prend la décision conformément aux critères qu'il a établis et que le Conseil de la magistrature a approuvés.

#### **PLAINTES**

(4) Lorsque le Conseil de la magistrature traite une plainte portée contre un juge provincial à qui s'applique le présent article, les dispositions spéciales suivantes s'appliquent :

VAMENE \*D \*

# ARTICLE 51.12

CONSULTATION

ARTICLE 51.11

de l'article 51.9, élabore un plan de formation continue aux termes de l'article 51.10 et élabore un programme d'évaluation du rendement en vertu de l'article 51.11, le juge en chef de la Cour de justice de l'Ontario consulte les juges de cette cour ainsi que d'autres personnes s'il l'estime

approprié.

# ARTICLE 87

#### **PROTONOTAIRES**

- 87 (1) Les personnes qui étaient protonotaires de la Cour suprême avant le 1er septembre 1990 sont protonotaires de la Cour supérieure de justice.
- (2) Les protonotaires ont la compétence que leur attribuent les règles de pratique dans les instances devant la Cour supérieure de justice.

# APPLICATION DES ART. 44 À 51.12

- (3) Les articles 44 à 51.12 s'appliquent, avec les adaptations nécessaires, aux protonotaires de la même manière qu'aux juges provinciaux.
- (4) Le juge en chef de la Cour supérieure de justice exerce, à l'égard des protonotaires, le povoir du juge en chef de la Cour de justice de l'Ontario qui est prévu aux paragraphes 44 (1) et (2).

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- (5) Le droit d'un protonotaire de continuer d'exercer ses fonctions en vertu du paragraphe 47 (3) est assujetti à l'approbation du juge en chef de la Cour supérieure de justice, qu'il rend une décision à cet effet conformément aux critères qu'il a établis et que le Conseil de la magistrature a approuvés.
- (6) Lorsque le Conseil de la magistrature traite une plainte portée contre un protonotaire, les dispositions spéciales suivantes s'appliquent :
- Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un protonotaire. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice de juge en chef de la Cour supérieure de justice désigne le protonotaire qui doit remplacer le juge.

#### EVALUATION DU RENDEMENT

51.11 (1) Le juge en chef de la Cour de justice de l'Ontario peut élaborer un programme d'évaluation du rendement des juges provinciaux et le mettre en oeuvre une fois qu'il a été examiné et approuvé par le Conseil de la magistrature.

# OBLIGATION DU JUGE EN CHEF

(2) Le juge en chef rend public le programme d'évaluation du rendement une fois qu'il a été approuvé par le Conseil de la magistrature.

#### OBJECTIFS

- (3) Les objectifs suivants constituent certains des objectifs que le juge en chef peut chercher à réaliser en élaborant un programme d'évaluation du rendement des juges :
- I. Accroître le rendement individuel des juges et le rendement des juges dans leur ensemble.
- 2. Déterminer les besoins en formation continue.
- 3. Aider à l'affectation des juges.
- 4. Déterminer les possibilités de perfectionnement professionnel.
- professionnel.

## PORTÉE DE L'ÉVALUATION

(4) Dans l'évaluation du rendement d'un juge, la décision prise dans un cas particulier ne doit pas être prise en considération.

### CARACTÈRE CONFIDENTIEL

(5) Lévaluation du rendement d'un juge est confidentielle et n'est divulguée qu'au juge, à son juge principal régional et à la personne ou les personnes qui font l'évaluation.

# NON-ADMISSIBILITÉ, EXCEPTION

(6) L'évaluation du rendement d'un juge ne doit pas être admise en preuve devant le Conseil de la magistrature ni devant un tribunal, qu'il soit judiciaire, quasi-judiciaire ou administratif, sauf si le juge y consent.

#### APPLICATION DES PAR. (5) ET (6)

(7) Les paragraphes (5) et (6) s'appliquent à tout ce qui est compris dans l'évaluation du rendement d'un juge ainsi qu'à tous les renseignements recueillis relativement à l'évaluation.

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Τ.

- Reconnaître l'autonomie de la magistrature.
- 2. Maintenir la qualité supérieure du système judiciaire et assurer l'administration efficace de la justice.
- 3. Favoriser l'égalité au sein du système judiciaire et le sentiment d'inclusion à celui- ci.
- 4. Faire en sorte que la conduite des juges atteste le respect qui leur est témoigné.
- Souligner la nécessité d'assurer, par la formation continue, le perfectionnement professionnel et le développement personnel des juges ainsi que le développement de leur sensibilisation aux

### ARTICLE 51.10

questions sociales.

#### FORMATION CONTINUE

51.10 (1) Le juge en chef de la Cour de justice de l'Ontario élabore un plan de formation continue des juges provin- ciaux et le met en oeuvre une fois qu'il a été examiné et approuvé par le Conseil de la magistrature.

#### OBLIGATION DU JUGE EN CHEF

(2) Le juge en chef veille à ce que le plan de formation continue soit mis à la disposition du public, en français et en anglais, une fois qu'il a été approuvé par le Conseil de la magistrature.

#### **OBJECTIFS**

- (3) La formation continue des juges vise les objectifs suivants :
- Maintenir et développer la compétence
   professionnelle.
- 2. Maintenir et développer la sensibilisation aux questions sociales.
- Promouvoir le développement personnel.

#### DÉPÔT DE LA RECOMMANDATION

(2) Le procureur général dépose la recommandation devant l'Assemblée. Si celle-ci ne siège pas, il la dépose dans les quinze jours qui suivent le début de la session suivante.

#### DÉCRET DE DESTITUTION

(3) Le lieutenant-gouverneur peut prendre un décret en vue de la destitution d'un juge provincial prévue au présent article, sur demande de l'Assemblée.

#### APPLICATION

(4) Le présent article s'applique aux juges provinciaux qui n'ont pas encore atteint l'âge de la retraite et aux juges provinciaux dont le maintien en fonction après avoir atteint l'âge de la retraite a été approuvé en vertu du paragraphe 47 (3), (4) ou (5).

#### DISPOSITION TRANSITOIRE

(5) Une plainte portée contre un juge provincial devant le Conseil de la magistrature avant le jour de l'entrée en vigueur de l'article 16 de la Loi de 1994 modifiant des lois en ce qui concerne les tribunaux judiciaires et examinée à une traitée par celui-ci tel qu'il était constitué immédiatement avant ce jour-là, conformément à l'article 49 de la présente loi tel qu'il existait immédiatement avant ce jour-là.

# ARTICLE 51.9

# NOBWES DE CONDUILE

51.9 (1) Le juge en chef de la Cour de justice de l'Ontario peut fixer des normes de conduite des juges provinciaux et élaborer un plan pour la prise d'effet des normes, et il peut mettre les normes en application et le plan en oeuvre une fois qu'ils ont été examinés et approuvés par le Conseil de la magistrature.

#### OBFICYTION DU JUGE EN CHEF

(2) Le juge en chef veille à ce que les normes de conduite soient mises à la disposition du public, en français et en anglais, une fois qu'elles ont été approuvées par le Conseil de la magistrature.

#### **OBJECTIFS**

(3) Les objectifs suivants constituent certains des objectifs que le juge en chef peut chercher à réaliser en mettant en application les normes de conduite des juges :

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# DIVULGATION DU NOM

Conseil n'ait, par ailleurs, rendu public le nom du juge. n'y ait eu une audience publique sur la plainte ou que le procureur général ne doit pas le divulguer à moins qu'il Conseil de la magistrature fournit le nom du juge, mais le (6) Dans sa recommandation au procureur général, le

#### MONTANT DE L'INDEMNITÉ

de l'Ontario pour des services similaires. le taux maximal normalement prévu par le gouvernement selon un taux pour services juridiques qui ne dépasse pas des frais pour services juridiques du juge et est calculé du paragraphe (4) ou (5) peut se rapporter à tout ou partie (7) Le montant de l'indemnité recommandé aux termes

#### **VERSEMENT**

conformément à la recommandation. (8) Le procureur général verse l'indemnité au juge

### ARTICLE 51.8

(i)

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### DESTITUTION MOTIVEE

51.8 (1) Un juge provincial ne peut être destitué que

si les conditions suivantes sont réunies:

- Conseil de la magistrature; une plainte a été portée à son sujet devant le (B
- : səmavius anosiar səb ənu'l moq əlidadai de remplir convenablement ses ionctions ou blu juge en raison du fait qu'il est devenu incapable recommande au procureur général la destitution audience tenue aux termes de l'article 51.6, le Conseil de la magistrature, à l'issue d'une
- mais n'a pas remédié à l'inaptitude), compte de ces besoins, ou a été rendue personne à laquelle il incomberait de tenir causerait un préjudice injustifié à la pourrait pas être rendue parce qu'elle ne remédierait pas à l'inaptitude ou ne qu'il soit tenu compte de ses besoins de son poste (si une ordonnance pour à s'acquitter des obligations essentielles il est inapte, en raison d'une invalidité,
- l'exercice convenable de ses fonctions, il a eu une conduite incompatible avec (II)
- charge. il n'a pas rempli les fonctions de sa (iii)

- du paragraphe (9). duquel une ordonnance a été rendue en vertu Le plaignant ou le témoin à la demande Ţ.
- 7
- n'ordonne que le nom du juge soit divulgué. à moins que le Conseil de la magistrature Le juge, si l'audience a été tenue à huis clos,

### INTERDICTION PERMANENTE DE PUBLIER

être rendus publics sans le consentement de celui-ci. plainte qui pourraient identifier le juge ne doivent jamais et le Conseil ordonne que les renseignements relatifs à la doit pas être identifié dans le rapport sans son consentement la plainte en concluant qu'elle n'était pas fondée, le juge ne paragraphe (10) et que le Conseil de la magistrature rejette (20) Si une ordonnance a été rendue en vertu du

# ARTICLE 51.7

#### INDEMNISATION

51.6 et du présent article en ce qui concerne la plainte. à la démarche suivie aux termes des articles 51.4, 51.5 et les frais pour services juridiques qu'il a engagés relativement question de savoir si le juge devrait être indemnisé pour juge provincial, le Conseil de la magistrature étudie la 51.7 (1) Lorsqu'il a traité une plainte portée contre un

EXAMEN DE LA QUESTION JOINT À L'AUDIENCE

de la magistrature lui joint l'examen de la question de (2) S'il tient une audience sur la plainte, le Conseil

l'indemnisation.

# EXAMEN PUBLIC OU À HUIS CLOS

fait à huis clos. une audience publique sur la plainte; sinon, l'examen se Conseil de la magistrature est ouvert au public s'il y a eu (5) L'examen de la question de l'indemnisation par le

#### RECOMMANDATION

indique le montant de l'indemnité. sens au procureur général, laquelle recommandation Conseil de la magistrature fait une recommandation en ce (4) S'il est d'avis que le juge devrait être indemnisé, le

services juridiques et indique le montant de l'indemnité. général que le juge soit indemnisé pour ses frais pour Conseil de la magistrature recommande au procureur (5) Si la plainte est rejetée à l'issue d'une audience, le Mabl

### INVALIDITÉ

(13) S'il conclut que le juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de la faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

#### APPLICATION DU PAR. (13)

: is supilqqs's (13) s'applique :

- a) d'une part, un facteur de la plainte était que l'invalidité influe sur le fait que le juge n'est pas en mesure de s'acquitter des obligations essentielles du poste;
- d) d'autre part, le Conseil de la magistrature rejette la plainte ou prend des mesures prévues aux alinéas (11) a) à f).

### PRÉJUDICE INJUSTIFIÉ

(15) Le paragraphe (13) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a, et des exigences en matière de santé et de sécurité,

# PARTICIPATION

(16) Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe (13) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

#### LA COURONNE EST LIÉE

(17) Une ordonnance rendue aux termes du paragraphe (13) lie la Couronne.

# RAPPORT AU PROCUREUR GÉNÉRAL

(18) Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision, sous réserve d'une ordonnance rendue en vertu du paragraphe 49 (24). Le procureur général peut rendre le rapport public s'il est d'avis qu'il y va de l'intérêt public.

### NON-IDENTIFICATION DE PERSONNES

(19) Les personnes suivantes ne doivent pas être identifiées dans le rapport :

# EXCEPTIONNELLES DIVULGATION DANS DES CIRCONSTANCES

(8) Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

#### ORDONNANCES INTERDISANT LA PUBLICATION

(9) Si la plainte porte sur des allégations d'inconduite d'ordre sexuel ou de harcèlement sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

#### PUBLICATION INTERDITE

(10) Dans des circonstances exceptionnelles et conformément aux critères établis aux termes du paragraphe 51.1 (1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

#### MESURES

(11) Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclu qu'il  $\gamma$  non que la plainte n'est pas fondée ou, s'il conclut qu'il  $\gamma$  a eu inconduite de la part du juge, il peut, selon le cas :

- a) donner un avertissement au juge;
- b) réprimander le juge;
- c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de sièger à titre de juge;
- e) suspendre le juge, avec rémunération, pendant une période quelle qu'elle soit;
- f) suspendre le juge, sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours;
- g) recommander au procureur général la destitution du juge conformément à l'article 51.8.

Idem

(12) Le Conseil de la magistrature peut adopter toute combinaison des mesures énoncées aux alinéas (11) a) à f).

ANNEXT

#### DECISION DU CONSEIL

51.6 (1) Lorsque le Conseil de la magistrature décide de tenir une audience, il le fait conformément au présent article.

# COMPÉTENCES LÉGALES APPLICATION DE LA LOI SUR L'EXERCICE DES

(2) La Loi sur l'exercice des compétences légales, à l'exception de l'article 4 et du paragraphe 9 (1), s'applique

#### RECLES DE PROCÉDURE

à l'audience.

(3) Les règles de procédure que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1) s'appliquent à l'audience.

#### ROBJET DE LAUDIENCE COMMUNICATION CONCERNANT

(4) Les membres du Conseil de la magistrature qui participent à l'audience ne doivent pas communiquer ni directement ni indirectement avec une partie, un avocat, un mandataire ou une autre personne, pour ce qui est de l'objet de l'audience, sauf si toutes les parties et leurs avocats ou mandataires ont été avisés et ont l'occasion de participer.

# EXCEPTION

(5) Le paragraphe (4) n'a pas pour effet d'empêcher le Conseil de la magistrature d'engager un avocat pour se faire aider conformément au paragraphe 49 (21), auquel cas la nature des conseils donnés par l'avocat est communiquée aux parties pour leur permettre de présenter des observations quant au droit applicable.

#### PARTIES

(6) Le Conseil de la magistrature détermine quelles sont les parties à l'audience.

# EXCEPTION, AUDIENCES À HUIS CLOS

(7) Dans des circonstances exceptionnelles, le Conseil de la magistrature peut tenir la totalité ou une partie de l'audience à huis clos s'il décide, conformément aux critères établis aux termes du paragraphe 51.1 (1), que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique.

# (i) rejeter la plainte,

- (ii) renvoyer la plainte au juge en chef, en assortissant ou non le renvoi de conditions comme le prévoit le paragraphe 51.4 (15),
- (iii) tenir une audience aux termes de l'article 51.6.

## ТЯОЧЧЯ

(9) S'il approuve la décision prise au sujet de la plainte, le Conseil de la magistrature peut rendre publics les résultats de la médiation en fournissant un résumé de la plainte mais sans identifier le plaignant ni le juge.

#### **BENAOI VII CONSEIT**

(10) A n'importe quel moment pendant ou après la médiation, le plaignant ou le juge peut renvoyer la plainte au Conseil de la magistrature, lequel examine la question, à huis clos, et peut, selon le cas:

- a) rejeter la plainte;
- b) renvoyer la plainte au juge en chef, en assortissant ou non le renvoi de conditions comme le prévoit le paragraphe 51.4 (15);
- c) tenir une audience aux termes de l'article 51.6.

# DES COMBÉTENCES LÉGALES NON-APPLICATION DE LA LOI SUR L'EXERCICE

(11) La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature prévus aux paragraphes (8) et (10).

# AVIS AU JUGE ET AU PLAIGNANT

(12) Une fois qu'il s'est prononcé conformément au paragraphe (8) ou (10), le Conseil de la magistrature communique sa décision au juge et au plaignant, en exposant brièvement les motifs dans le cas d'un rejet.

# DIRECTIVES ET RÈGLES DE PROCÉDURE

(13) Lorsqu'il étudie des rapports, examine des questions et se prononce aux termes des paragraphes (8) et (10), le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe  $51.1\ (1)$ .

### LOI SUR LES TRIBUNAUX JUDICIAIRES - CHAPITRE C.43 - CONSEIL DE LA MAGISTRATURE

Idem

(3) Sans préjudice de la portée générale du paragraphe
(2), les critères doivent prévoir que les plaintes sont exclues de la procédure de médiation dans les circonstances suivantes :

- Il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable.
- 2. La plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motifilitrite de discrimination ou de harcèlement prévu dans une disposition du Code des droits de la prévu dans une disposition du Code des droits de la prevonne.
- 3. L'intérêt public requiert la tenue d'une audience sur la plainte.

#### CONSEITS INBIDIONES

(4) Une plainte ne peut être renvoyée à un médiateur que si le plaignant et le juge y consentent, s'ils peuvent obtenir des conseils juridiques de personnes indépendantes et s'ils en ont eu l'occasion.

#### MEDIATEUR QUALIFIÉ

(5) Le médiateur doit être une personne qui a reçu une formation en médiation et qui n'est pas un juge. Si la médiation est menée de concert par deux personnes ou plus, au moins une de ces personnes doit satisfaire à ces exigences.

# IMPARTIALITÉ

(6) Le médiateur est impartial.

## EXCLUSION

(7) Aucun des membres du sous-comité qui a enquêté sur la plainte et aucun des membres du Conseil de la magistrature qui a traité la plainte en vertu du paragraphe magistrature qui a traité la plainte en vertu du paragraphe  $1.4 \times 1.7$  ou (18) ne doit participer à la médiation.

#### EXAMEN PAR LE CONSEIL

- (8) Le médiateur présente un rapport sur les résultats de la médiation, sans identifier le plaignant ni le juge qui fait l'objet de la plainte, au Conseil de la magistrature, lequel étudie, à huis clos, le rapport et peut :
- a) approuver la décision prise au sujet de la plainte;
- b) si la médiation n'aboutit pas à une décision ou si le Conseil est d'avis que la décision n'est pas dans l'intérêt public :

- tenir une audience aux termes de l'article 51.6;
- b) rejeter la plainte;
- c) renvoyer la plainte au juge en chef, en assortissant ou non le renvoi de conditions comme le prévoit le paragraphe (15);
- d) renvoyer la plainte à un médiateur conformément à l'article 51.5.
- MON-APPLICATION DE LA LOI SUR

# REXERCICE DES COMPÉTENCES LÉGALES NON-APPLICATION DE LA LOI SUR

(19) La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature prévus aux paragraphes (17) et (18).

#### AVIS AU JUGE ET AU PLAIGNANT

(20) Une fois qu'il s'est prononcé conformément au paragraphe (17) ou (18), le Conseil de la magistrature communique sa décision au juge et au plaignant, en exposant brièvement les motifs dans le cas d'un rejet.

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

(21) Lorsqu'il mène des enquêtes, fait des recommandations en vertu du paragraphe (8) et se prononce aux termes des paragraphes (13) et (15), le sous-comité se conforme aux directives et aux règles de procédure que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1)

paragraphe 51.1 (1).

Idem (22) Lorsqu'il examine des rapports et des plaintes et se prononce aux termes des paragraphes (17) et (18), le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

## ARTICLE 51.5

MEDIATION

51.5 (1) Le Conseil de la magistrature peut établir une procédure de médiation pour les juges qui font l'objet de plaintes.

#### **CRITÈRES**

(2) Si le Conseil de la magistrature établit une procédure de médiation, il doit aussi établir des critères pour exclure de la procédure les plaintes qui ne se prêtent pas à la médiation.

juge selon la recommandation du sous-comité... supérieure de justice, qui peut suspendre ou réaffecter le la plainte est présentée au juge en chef de la Cour recommandation prévue au paragraphe (8) en ce qui concerne qui est membre du Conseil de la magistrature, toute la Cour de justice de l'Ontario ou le juge principal régional la Cour de justice de l'Ontario, un juge en chef adjoint de (12) Si la plainte est déposée contre le juge en chef de

# DÉCISION DU SOUS-COMITÉ

sejou je cas: (13) Lorsqu'il a terminé son enquête, le sous-comité,

- rejette la plainte;
- renvoie la plainte au juge en chet;
- renvoie la plainte à un médiateur conformément
- renvoie la plainte au Conseil de la magistrature, (P à l'article 51.5;
- audience aux termes de l'article 51.6. qu'il lui recommande ou non de tenir une
- (14) Le sous-comité ne peut rejeter la plainte ou la шәрі
- au Conseil de la magistrature. membres en conviennent, sinon, la plainte doit être renvoyée renvoyer au juge en chef ou à un médiateur que si les deux

# CONDITIONS DU RENVOI AU JUGE EN CHEF

renvoyer la plainte au juge en chet. la plainte y consent, assortir de conditions la décision de (15) Le sous-comité peut, si le juge qui fait l'objet de

### RAPPORT

selon le cas:

plainte. sans identifier le plaignant ni le juge qui fait l'objet de la rejetée ou renvoyée au juge en chef ou à un médiateur, un rapport sur sa décision concernant toute plainte qui est (16) Le sous-comité présente au Conseil de la magistrature

### POUVOIR DU CONSEIL DE LA MAGISTRATURE

ou exiger du sous-comité qu'il lui renvoie la plainte. à huis clos, et peut approuver la décision du sous-comité (17) Le Conseil de la magistrature examine le rapport,

clos, chaque plainte que le sous-comité lui renvoie et peut, (18) Le Conseil de la magistrature examine, à huis məpI

# ROTATION DES MEMBRES

siègent tous au sous-comité par rotation. (2) Les membres admissibles du Conseil de la magistrature

## REJET

constitue un abus de procédure. du Conseil de la magistrature, qu'elle est frivole ou qu'elle d'enquête si, à son avis, elle ne relève pas de la compétence (3) Le sous-comité rejette la plainte sans autre forme

# ENGUETE

(S), le sous-comité mène les enquêtes qu'il estime appropriées. (4) Si la plainte n'est pas rejetée aux termes du paragraphe

#### EXPERTS

des avocats, pour l'aider dans la conduite de son enquête. (5) Le sous-comité peut engager des personnes, y compris

#### ENQUÊTE À HUIS CLOS

(6) L'enquête est menée à huis clos.

## LEXERCICE DES COMPÉTENCES LÉGALES NON-APPLICATION DE LA LOI SUR

s'applique pas aux activités du sous-comité. (7) La Loi sur l'exercice des compétences légales ne

# RECOMMANDATIONS PROVISOIRES

à un autre endroit, jusqu'à ce qu'une décision définitive juge qui fait l'objet de la plainte ou l'affectation de celui-ci principal régional la suspension, avec rémunération, du (8) Le sous-comité peut recommander à un juge

concernant la plainte ait été prise.

## Mabl

est présentée à un autre juge principal régional. Conseil de la magistrature, auquel cas la recommandation affecté, sauf si le juge principal régional est membre du régional nommé pour la région à laquelle le juge est (9) La recommandation est présentée au juge principal

### POUVOIR DU JUGE PRINCIPAL RÉGIONAL

réaffecter le juge selon la recommandation du sous-comité. (10) Le juge principal régional peut suspendre ou

### POUVOIR DISCRÉTIONNAIRE

surveillance de la part du juge en chef. sous-comité n'est pas assujetti à l'administration ni à la régional d'accepter ou de rejeter la recommandation du (11) Le pouvoir discrétionnaire qu'a le juge principal

INDNE

(2) Les plaintes contre des juges provinciaux peuvent être portées en français ou en anglais.

Məbl

(3) L'audience prévue à l'article 51.6 est menée en anglais, mais le plaignant ou le témoin qui parle français ou le juge qui fait l'objet d'une plainte et qui parle français a droit, sur demande, à ce qui suit :

- a) avant l'audience, une traduction en français des documents qui sont en anglais et qui seront examinés à l'audience;
- b) les services d'un interprète à l'audience;
- c) l'interprétation simultanée en français des parties de l'audience qui se déroulent en anglais.

Idem (4) Le paragraphe (3) s'applique également aux médiations menées aux termes de l'article 51.5 et à l'examen qu'à effectué le Conseil de la magistrature aux termes de l'article 51.7 en ce qui concerne la question de l'indemnisation, si le paragraphe 51.7 (2) s'applique.

#### AUDIENCE OU MÉDIATION BILINGUE

(5) Le Conseil de la magistrature peut ordonner qu'une audience ou une médiation à laquelle s'applique le paragraphe (3) soit bilingue s'il est d'avis qu'elle peut être menée convenablement de cette manière.

# PARTIE D'AUDIENCE OU DE MÉDIATION

(6) Un ordre prévu au paragraphe (5) peut s'appliquer à une parrie de l'audience ou de la médiation, auquel cas les paragraphes (7) et (8) s'appliquent avec les adaptations nécessaires.

Idem (7) Au cours d'une audience ou d'une médiation bilingue :

- a) les témoignages oraux et les observations orales peuvent être présentés en français ou en anglais et ils sont consignés dans la langue de présentation;
- b) les documents peuvent être déposés dans l'une
- c) dans le cas d'une médiation, les discussions peuvent avoir lieu dans l'une ou l'autre langue;
- d) les motifs d'une décision ou le rapport du médiateur, selon le cas, peuvent être rédigés dans l'une ou l'autre langue.

məpl məbl

- (8) Lors d'une audience ou d'une médiation bilingue, si le plaignant ou le juge qui fait l'objet de la plainte ne parle qu'une des deux langues, il a droit, sur demande, à l'interprétation simultanée des témoignages, des observations ou des discussions qui ont lieu dans l'autre langue et à une traduction des documents déposés ou des motifs ou rapports rédigés dans l'autre langue.
- rédigés dans l'autre langue.

# ARTICLE 51.3

#### PLAINTES

51.3 (1) Toute personne peut porter devant le Conseil de la magistrature une plainte selon laquelle il y aurait eu inconduite de la part d'un juge provincial.

Idem

(2) Si une allégation d'inconduite contre un juge provincial est présentée à un membre du Conseil de la magistrature, elle est traitée comme une plainte portée devant celui-ci.

Iqem

(3) Si une allégation d'inconduite contre un juge provincial est présentée à un autre juge ou au procureur général, cet autre juge ou le procureur général, selon le cas, fournit à l'auteur de l'allégation des renseignements sur le rôle du Conseil de la magistrature au sein du système judiciaire et sur la façon de porter plainte, et le renvoie au Conseil de la magistrature.

Conseil de la magistrature.

#### CONDUITE DE L'AFFAIRE

(4) Une fois qu'une plainte a été portée devant lui, le Conseil de la magistrature est chargé de la conduite de l'affaire.

# RENSEIGNEMENTS SUR LA PLAINTE

(5) A la demande de toute personne, le Conseil de la magistrature peut confirmer ou nier qu'il a été saisi d'une plainte donnée.

# ARTICLE 51.4

## EXAMEN PAR UN SOUS-COMITÉ

51.4(1) La plainte reçue par le Conseil de la magistrature est examinée par un sous-comité du Conseil qui se compose d'un juge provincial autre que le juge en chef et d'une personne qui n'est ni juge ni avocat.

# LOI SUR LES TRIBUNAUX JUDICIAIRES – CHAPITRE C.43 – CONSEIL DE LA MAGISTRATURE

### INFORMATION AU PUBLIC

sur ce que les membres du public peuvent faire pour sujet du système judiciaire, y compris des renseignements palais de justice et ailleurs, de l'information à son sujet et au 51 (1) Le Conseil de la magistrature fournit, dans les

obtenir de l'aide en vue de porter plainte.

des besoins des personnes handicapées. culturels et linguistiques et sur l'importance de tenir compte magistrature met l'accent sur l'élimination des obstacles (2) Lorsqu'il fournit de l'information, le Conseil de la

# VIDE VO BOBLIC

l'aide pour préparer des documents en vue de porter plainte. dispositions afin que les membres du public reçoivent de (5) Au besoin, le Conseil de la magistrature prend des

# ACCÈS PAR TÉLÉPHONE

du système judiciaire, y compris un service pour sourds. l'information à son sujet, notamment sur son rôle au sein province, un service téléphonique gratuit d'accès à de (4) Le Conseil de la magistrature offre, à l'échelle de la

# PERSONNES HANDICAPÉES

exigences en matière de santé et de sécurité, s'il y en a. des sources extérieures de financement, s'il y en a, et des ne lui cause un préjudice injustifié, compte tenu du coût, tenu compte de leurs besoins, à ses frais, à moins que cela plaintes, le Conseil de la magistrature fait en sorte qu'il soit participer efficacement à la procédure à suivre pour les (5) Afin de permettre aux personnes handicapées de

contenir de renseignements qui pourraient identifier le exposé de la décision. Toutefois, le rapport ne doit pas l'année, un sommaire de la plainte, les conclusions et un à l'égard de toutes les plaintes reçues ou traitées pendant annuel, en français et en anglais, sur ses activités, y compris, magistrature présente au procureur général un rapport (6) Après la fin de chaque année, le Conseil de la

juge ou le plaignant.

RAPPORT ANNUEL

devant l'Assemblée.

au lieutenant-gouverneur en conseil et le dépose alors (7) Le procureur général présente le rapport annuel DEPOT

# ARTICLE 51

# RECLES

ARTICLE 51.1

: iius iup publiques ses propres règles de procédure, y compris ce 51.1 (1) Le Conseil de la magistrature établit et rend

l'application de l'article 45. Des directives et les règles de procédure pour

(12) 4.18 and paragraphe 51.4. Des directives et les règles de procédure pour

l'application du paragraphe 51.4 (22). Des directives et les règles de procédure pour

S'il y a lieu, des critères pour l'application du

S'il y a lieu, des directives et les règles de procédure  $(2) \in I \subset Appragazaga$ 

pour l'application du paragraphe 51.5 (13).

.(E) 0.15 angragarag Les règles de procédure pour l'application du

.(7) 8.18 Des critères pour l'application du paragraphe

Des critères pour l'application du paragraphe .8

Des critères pour l'application du paragraphe .6

.(01) 8.18

(2) La Loi sur les règlements ne s'applique pas aux

# TOI SUR LES REGLEMENTS

ARTICLE 51.2

TOI SUR L'EXERCICE DES COMPÉTENCES magistrature.

règles, directives ou critères établis par le Conseil de la

# *TECYTES*

magistrature. compétences légales ne s'appliquent pas au Conseil de la (3) Les articles 28, 29 et 33 de la Loi sur l'exercice des

# TVNCOES OFFICIELLES DANS LES TRIBUNAUX

du paragraphe 51.1 (1) le sont en français et en anglais. 51(1), (3) et (4) et tout ce qui est rendu public aux termes 51.2 (1) L'information fournie aux termes des paragraphes

# LOI SUR LES TRIBUNAUX JUDICIAIRES - CHAPITRE C.43 - CONSEIL DE LA MAGISTRATURE

le juge en chef adjoint de la Cour de justice de l'Ontario préside les réunions et les audiences du Conseil au lieu du juge en chef, de la Cour vertu du paragraphe 49 (3) au lieu du juge en chef, jusqu'à ce qu'une decrsion définitive concernant la plainte ait été prise;

tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario aux termes de l'alinéa 51.4 (13) b) ou 51.4 (18) c), du sous- alinéa 51.5 (8) b) (ii) ou de l'alinéa 51.5 (10) b) est fait au juge en chef de la Cour supérievre de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

#### SUSPENSION DU JUGE EN CHEF

(2) Si le juge en chef de la Cour de justice de l'Ontario est suspendu en vertu du paragraphe 51.4 (12) :

d'une part, les plaintes qui seraient par ailleurs renvoyées au juge en chef de la Cour de justice de l'Ontario aux termes des alinéas 51.4 (13) b) et 51.4 (18) c), du sous-alinéa 51.5 (8) b) (ii) et de l'alinéa 51.5 (10) b) sont renvoyées au juge en chef adjoint de la Cour de justice de l'Ontario en chef adjoint de la Cour de justice de l'Ontario l'usqu'à ce qu'une décision définitive concernant la plainte ait été prise;

d'autre part, les approbations annuelles qui seraient par ailleurs accordées ou refusées par le juge en chef de la Cour de justice de l'Ontario jusqu'à adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

# ADJOINT OU UN JUGE PRINCIPAL RÉGIONAL

(3) Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé aux termes de l'alinéa 49 (2) c) fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario provinciale au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte jusqu'à ce qu'une décision définitive concernant la plainte

ait été prise,

(q

# DOSSIERS CONFIDENTIELS

(24) Le Conseil de la magistrature ou un sous-comité peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos est confidentiel et ne doit pas être divulgué ni rendu public.

Idem

(25) Le paragraphe (24) s'applique, que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne.

#### EXCEPTIONS

(26) Le paragraphe (24) ne s'applique pas aux renseignements ni aux documents qui satisfont à l'une ou l'autre des conditions suivantes :

a) leur divulgation par le Conseil de la magistrature est exigée par la présente loi;

ils n'ont pas été traités comme des documents ou renseignements confidentiels et n'ont pas été propares exclusivement aux fins de la mediation ou d'une réunion ou d'une audience du Conseil.

#### IMMUNITÉ

(27) Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre le Conseil de la magistrature, un de ses membres ou de ses employés ou quiconque agit sous son autorité pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel de ses fonctions.

#### RÉMUNERATION

(28) Les membres qui sont nommés aux termes de l'alinéa (2) g) ont le droit de recevoir la rémunération quotidienne que fixe le lieutenant-gouverneur en conseil.

# ARTICLE 50

DE LA COUR DE JUSTICE DE L'ONTARIO PLAINTE DÉPOSÉE CONTRE LE JUGE EN CHEF

50 (1) Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte :

le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

D-3

# VACANCE

(12) Si le poste d'un membre nommé aux termes de l'alinéa (2) d), f) ou g) devient vacant, un nouveau membre possédant des compétences similaires peut être nommé pour terminer le mandat.

#### бловим

(13) Les règles suivantes concernant le quorum s'appliquent, sous réserve des paragraphes (15) et (17) :

1. Huit membres, y compris le président,

constituent le quorum.

2. Au moins la moitié des membres présents doivent être des juges et au moins quatre autres membres ne doivent pas être des juges.

## COMITÉ D'EXAMEN

(14) Le Conseil de la magistrature peut former un comité en vue de traiter une plainte visée au paragraphe 51.4 (17) ou (18) ou au paragraphe 51.5 (8) ou (10) et d'examiner la question concernant l'indemnisation aux termes de l'article 51.7 et, à cette fin, le comité a les mêmes pouvoirs que le Conseil de la magistrature.

Idem (15) Les règles suivantes s'appliquent à un comité formé en vertu du paragraphe (14) :

1. Le comité se compose de deux juges provinciaux autres que le juge en chef, d'un avocat et d'une personne qui n'est ni juge ni avocat.

2. Un des juges, désigné par le Conseil de la magistrature, préside le comité.

3. Quatre membres constituent le quorum.

# COMITES D'AUDIENCE

(16) Le Conseil de la magistrature peut former un comité en vue de tenir une audience en vertu de l'article 51.6 et d'examiner la question concernant l'indemnisation aux termes de l'article 51.7 et, à cette fin, le comité a les mêmes pouvoirs que le Conseil de la magistrature.

(17) Les règles suivantes s'appliquent à un comité formé en vertu du paragraphe (16) :

 La moitié des membres du comité, y compris le président, doivent être des juges et la moitié ne doivent pas être des juges.

2. Un membre, au moins, ne doit être ni juge ni avocat.

- 3. Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside le comité.
- Sous réserve des dispositions I, 2 et 3, le Conseil de la magistrature peut fixer le nombre des membres du comité et en déterminer la
- 5. Tous les membres du comité constituent le quorum.

#### **PRÉSIDENCE**

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(18) Le président d'un comité formé en vertu du paragraphe (14) ou (16) a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

#### PARTICIPATION AUX ÉTAPES DE LA PROCÉDURE

(19) Les membres du sous-comité qui a enquêté sur une plainte ne doivent pas, selon le cas:

4.15 entranger and paragraphs and sample and sample 6.1.7 (a); (01) uo (8) 6.1.7 (10); (01) uo (8) 6.1.7

b) participer à une audience sur la plainte prévue à l'article 51.6.

Idem

(20) Les membres du Conseil de la magistrature qui ont traité la plainte aux termes du paragraphe 51.4 (17) ou (18) ou du paragraphe 51.5 (8) ou (10) ne doivent pas participer à une audience sur la plainte prévue à l'article 51.6.

#### EXPERTS

(21) Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider.

#### SERVICES DE SOUTIEN

(22) Le Conseil de la magistrature fournit des services de soutien, y compris l'orientation initiale et la formation continue, pour permettre à ses membres de participer efficacement. Il prête une attention particulière aux besoins des membres qui ne sont ni juges ni avocats et administre séparément une partie de son budget affecté administre séparément and partie de soutien à cette fin.

Idem (23) Le Conseil de la magistrature administre séparément

une partie de son budget affecté aux services de soutien pour répondre aux besoins de tout membre qui a une invalidité.

#### CRITÈRES

(4) Au moment de la nomination des membres effectuée aux termes des alinéas (2) d), f) et g), l'importance qu'il y a de refléter, dans la composition du Conseil de la magistrature, la dualité linguistique de l'Ontario et la diversité de sa population et de garantir un équilibre général entre les deux sexes est reconnue.

TAGIA

#### TAGNAM

(5) Le juge principal régional qui est nommé aux termes de l'alinéa (2) c) demeure membre du Conseil de la magistrature jusqu'à ce qu'il cesse d'exercer les fonctions de juge principal régional.

wa

(6) Le mandat des membres qui sont nommés aux termes des alinéas (2) d), f) et g) est de quatre ans et n'est pas renouvelable.

#### MANDATS DE DURÉES DIVERSES

(7) Malgré le paragraphe (6), le mandat d'un des membres nommés pour la première fois aux termes de l'alinéa (2) d) et de deux des membres nommés pour la première fois aux termes de l'alinéa (2) g) est de six ans.

#### **bEESIDENCE**

(8) Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside les réunions et les audiences du Conseil de la magistrature qui portent sur des plaintes portées contre certains juges, et les réunions tenues par celui-ci pour l'application de l'article 45 et du paragraphe 47 (5).

Idem

(9) Le juge en chef de la Cour de justice de l'Ontario, ou un autre juge de cette cour désigné par le juge en chef, préside les autres réunions et audiences du Conseil de la magistrature.

Idem

(10) Le président a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau

nouveau.

#### EL Y HNIS CFOS VIDIENCES EL BENNIONS ENBLIGNES

(11) Les audiences et les réunions du Conseil de la magistrature prévues aux articles 51.6 et 51.7 sont ouvertes au public, à moins que le paragraphe 51.6 (7) ne s'applique. Ses autres audiences et réunions peuvent être tenues à huis clos, sauf disposition contraire de la présente loi.

# LOI SUR LES TRIBUNAUX CONSEIL DE LA MAGISTRATURE

# ARTICLE 49

#### CONSEIL DE LA MAGISTRATURE

49 (1) Le Conseil de la magistrature de l'Ontario est maintenu sous le nom de Conseil de la magistrature de l'Ontario en français et sous le nom de Ontario Judicial Council en anglais.

#### COMPOSITION

(2) Le Conseil de la magistrature se compose :

- a) du juge en chef de l'Ontario ou d'un autre juge de la Cour d'appel désigné par le juge en chef;
- du juge en chef de la Cour de justice de l'Ontario, ou d'un autre juge de cette cour désigné par le juge en chef, et du juge en chef adjoint de la Cour de justice de l'Ontario;
- c) d'un juge principal régional de la Cour de justice de l'Ontario, nommé par le lieutenant-gouverneur en conseil sur la recommandation du procureur général;
- d) de deux juges de la Cour de justice de l'Ontario nommés par le juge en chef;
- c) du trésorier de la Société du barreau du Haut-Canada ou d'un autre conseiller de la Société du barreau qui est avocat désigné par le trésorier;
- d'un avocat qui n'est pas conseiller de la Société du barreau du Haut-Canada, nommé par la Société
- du barreau;

  g) de quatre personnes qui ne sont ni juges ni avocate, nommées par le lieutenant-gouverneur en conseil sur la recommandation du procureur

#### MEMBRES TEMPORAIRES

général.

(3) Le juge en chef de la Cour de justice de l'Ontario peut nommer un juge de cette division au Conseil de la magistrature à titre de membre temporaire au lieu d'un autre juge provincial, en vue de traiter une plainte, si les exigences des paragraphes (13), (15), (17), (19) et (20) ne peuvent autrement être satisfaites.

# **VUNEXE «D»**

# CONSEIL DE LA MAGISTRATURE CONSEIL DE LA MAGISTRATURE

Les textes de la Loi sur les tribunaux judiciaires, c. C-43 qui suivent ne doivent pas être considérés comme les textes authentiques, lesquels se trouvent dans les volumes officiels et les codifications administratives imprimés par Publications Ontario.



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·uondo qui seront autorisés à bénéficier d'une telle pairs examine les demandes et choisit les juges genre de congé, et un comité de révision des Lapprobation préalable est nécessaire pour ce ode de congé autofinancé d'au plus douze mois. nombre d'années en vue de prendre une pèrijuges de reporter leur revenu sur un certain politique de congé autofinancé qui permet aux la Cour de justice de l'Ontario a élaboré une de formation courants qui leur sont otterts,

justice autochtone. l'isolation des juges, les déplacements et la d'un intérêt particulier pour le Nord, comme ble des questions touchant la formation qui sont du Nord-Ouest de la province abordent ensem-Nord où les juges des régions du Nord-Est et cas, par exemple, de la réunion régionale du comportent aussi un volet éducatif. Tel est le à l'échelle régionale, certaines d'entre elles des questions administratives ou de gestion soient principalement une occasion d'examiner régionales annuelles. Bien que ces réunions régions actuelles de la Cour tiennent des réunions RÉUNIONS RÉGIONALES : La plupart des sept

pairs, de la lecture et de la recherche personnelle. entre autres, par le biais des discussions avec les demeure une démarche autonome et s'effectue, ci-dessus, la formation fondamentale des juges Outre les programmes de formation mentionnés

> istration de l'IMM. Le juge en chef est membre du conseil d'adminde l'IMM, selon l'emplacement et le sujet traité. continueront de participer aux programmes la Cour de justice de l'Ontario participent et autorités provinciales et fédérales. Les juges de pays à l'intention des juges nommès par les bre de programmes de tormation dans tout le se trouve à Ottawa, subventionne un certain nom-

d'autres provinces. pour les juges de nomination provinciale dans la Cour qui sera également responsable de la l'embauchage d'un directeur d'éducation pour I'IVM dans un programme conjoint qui verra La Cour de justice de l'Ontario participe avec

coordination et du développement des programmes

# **EDUCATIVES** IV. LES AUTRES RESSOURCES

intitulée Items of Interest. jurisprudence dans sa publication périodique des mises à jour sur les textes législatifs et la sur des points particuliers. Il fournit en outre répond aux demandes de recherche des juges ique ou par télécopieur. Le Centre de recherche personne, par téléphone, par courrier électronde soutien. On peut accéder au Centre en deux avocats recherchistes et d'un personnel système de recherche informatisé, dispose de composé d'une bibliothèque juridique et d'un de ville, à Toronto. Le Centre de recherche, de justice de l'Ontario situé à l'ancien hôtel ont accès au Centre de recherche de la Cour Les juges de la Cour de justice de l'Ontario CENTRE DE RECHERCHE JUDICIAIRE:

tion intitulée Recent Developments. la Cour suprême du Canada dans une publicadécisions de la Cour d'appel de l'Ontario et de résumé et des commentaires sur les dernières intéressés de la Cour de justice de l'Ontario un MacDonnell fournit également à tous les juges RECENT DEVELOPMENTS: M. le juge lan

des études qui sortent du cadre des programmes fournir aux juges la possibilité de poursuivre CONCE AUTOFINANCE: Dans le but de

VANNEXE

mine le Secrétariat de la formation chaque année. fonction des fonds disponibles, selon ce que déterd'évaluation des programmes. Ce programme est un comité de sélection par des pairs et un mécanisme les juges qui désirent participer à de tels programmes, ités. La procédure prévoit le dépôt d'une demande par ment une certaine somme pour participer à ces activaider les juges qui sont prêts à dépenser personnellegénéralement pas 100 % des coûts puisqu'il vise à financement, lorsqu'il est accordé, ne couvre organisés par la Cour de justice de l'Ontario. Le férences, séminaires ou programmes autres que ceux par les juges qui souhaitent participer à des condemandes individuelles de financement présentées ticipation aux conférences chargé d'examiner les Le Secrétariat de la formation a créé un comité de par-

continuent d'être offerts. système de recherche juridiques). Ces derniers l'utilisation de Quicklaw (base de données et tion de données. D'autres cours portaient sur texte ainsi que sur l'enregistrement et l'extracsur les bases de l'informatique, le traitement de able de la formation pour participer à des cours rendaient aux bureaux du fournisseur responsla province. Généralement, les juges se et étaient offerts à différentes dates partout dans des participants et l'endroit où ils se trouvaient cours étaient organisés selon les compétences juges de la Cour de justice de l'Ontario. Ces série de cours d'informatique à l'intention des de justice de l'Ontario offrait dans le passé une contrat conclu avec un fournisseur, la Cour 3. COURS D'INFORMATIQUE : Aux termes d'un

Avec la mise en œuvre du projet de dotation en ordinateurs de bureau et du Projet d'intégration du système judiciaire dans tout l'appareil judiciaire de l'Ontario au cours de l'été de 1998, la formation informatique des juges a augmenté considérablement pour que tous les membres de la Cour aient des connaissances suffisantes en informatique.

4. INSTITUT NATIONAL DE LA MAGISTRATURE (INM) : Par l'intermédiaire de son Secrétariat de la formation, la Cour de justice de l'Ontario contribue financièrement aux activités de l'Institut national de la magistrature. L'IMM, dont le siège

# III. LES PROGRAMMES DE FORMATION EXTERNES

de justice de l'Ontario qui ont des compétences de l'actice de l'Ontario qui ont des compétences en français peuvent participer à des cours offerts par le Bureau du Commissaire à la magistrature fédérale. Le niveau de compétence des juges détermine la fréquence et la durée des cours. Ceux-ci ont pour but d'assurer que les juges appelés à présider des audiences en français à la Cour de justice de l'Ontario possèdent les à la Cour de justice de l'Ontario possèdent les à la Cour de justice de l'Ontario possèdent les a) les cours de terminologie à l'intention des juges francophones; b) les cours de terminologie juges francophones; b) les cours de terminologie à l'intention des juges francophones; b) les cours de terminologie à l'intention des juges anglophones (bilingues).

2. AUTRES PROGRAMMES DE FORMATION: On encourage les juges de la Cour de justice de l'Ontario à enrichir leur formation en participant à des programmes offerts par d'autres organismes et associations, notamment les suivants:

- Association canadienne des juges de cours provinciales
- Institut national de la magistrature
- Fédération des professions juridiques du Canada: droit pénal (droit substantiel,, procédure/preuve) et droit de la famille
- Association internationale des magistrats de la jeunesse et de la famille
- Association du Barreau canadien
- Association des avocats criminalistes
- Advocate's Society Conference
- Association ontarienne de médiation familiale/ Médiation Canada
- Institut canadien d'administration de la justice
- Association internationale des femmes juges (chapitre canadien)
- Conférence sur les cliniques juridiques de la Cour de la famille de l'Ontario
- Institut canadien d'études juridiques supérieures

C-2 VNNEXE

de la Cour de justice de l'Ontario. dans plusieurs autres programmes de formation Le modèle d'animateur a depuis lors été utilisé constituent des sources de référence permanentes. appel à des vidéos et à des publications qui imateurs du programme. Celui-ci fait largement de l'Ontario ont reçu une formation à titre d'ancertain nombre de juges de la Cour de justice planification, qui a duré plus de 12 mois, un du programme. Au cours du processus de les phases de planification et de présentation professionnelles et communautaires pendant de 1992. On a eu recours à des ressources externes intitulé Égalité des sexes, a été offert à l'automne contexte social. Le premier de ces programmes, d'importants programmes portant sur le La Cour de justice de l'Ontario présente PROGRAMMES SUR LE CONTEXTE SOCIAL:

La Cour a entrepris en mai 1996 son deuxième grand programme sur le contexte social, présenté à tous ses juges. Ce programme, intitulé La Cour dans une société inclusive, visait à donner de l'information sur l'évolution de la société afin de préparer la Cour à mieux y répondre. Ce programme faisait appel à diverses techniques programme faisait appel à diverses techniques pédagogiques, notamment des séances en groupes de diverse taille. Un certain nombre de juges animateurs avaient reçu une formation spéciale pour offrir ce programme qui a été présenté pour offrir ce programme qui a été présenté à la suite de consultations communantaires à la suite de consultations communantaires à grande échelle.

En septembre 2000 la Conférence des juges de l'Ontario et l'Association canadienne des juges de cours provinciales se réunitont à Ottawa pour une conférence qui traitera, entre autres, des questions de la pauvreté ainsi que des questions touchant la justice autochtone.

Étant donné l'engagement de la Cour dans le domaine de la formation nortant sur le contexte

Etant donné l'engagement de la Cour dans le domaine de la formation portant sur le contexte social, la Conférence des juges de l'Ontario a créé un comité spécial sur l'égalité pour faire en sorte que les programmes de formation des associations tiennent compte des questions touchant le contexte social et leur accordent une place permanente.

Au cours de l'exercice 1997-1998, le Secrétariat de la formation a passé un contrat avec le professeur Edward Berry, de l'Université de Victoria, pour la préparation d'un manuel de rédaction de jugemente à l'intention des juges de la Cour. Ce document est prêt et a été envoyé à tous les juges de la Cour.

SÉMINAIRE PRÉ-RETRAITE: Ce programme de deux jours et demi, conçu à l'intention des juges qui s'approchent de l'âge de la retraite (et de leur conjoint), aborde la question de la transition de la magistrature à la retraite. Il est donné à Toronto, généralement une fois par an, lorsque le nombre de participants le justifie.

au rôle spécifique d'un juge de première instance Ils avaient modifié le projet pilote pour convenir en collaboration avec son associé Frank Borowicz. organisé et présenté par le professeur Neil Gold provinces. Ce programme a été développé, visant son utilisation éventuelle dans d'autres et à y participer dans le contexte d'une évaluation derniers ont été invités à observer le programme canadienne des juges de cours provinciales. Ces ainsi que deux juges représentants l'Association de la Cour de justice de l'Ontario y ont participé conférences au mois de mars 2000. Seize juges Le Secrétariat a présenté la première de ces l'on disposera des fonds et du temps voulus. judiciaire qui seront donnés dans la mesure où vue des séminaires futurs sur la communication l'Ontario, devait faire office de projet pilote en a été offert à 25 juges de la Cour de justice de nication étaient analysées. Ce programme, qui sur bande vidéo et leurs techniques de commuparticipants étaient enregistrés individuellement connexes. Au cours du programme, les juges verbales et non verbales, l'écoute et les problèmes dirigées et des discussions sur les communications judiciaire. Ce programme comprenait des activités programme de formation sur la communication l'Université du Nevada, pour la présentation d'un Gordon Zimmerman et Alayne Casteel, de de l'Ontario a retenu les services des professeurs UDICIAIRE. En mars 1998, la Cour de Justice PROGRAMME DE COMMUNICATION

dans une salle d'audience canadienne.

WORLD BE ACK

et le contexte social, sont incorporés au programme à mesure que le besoin s'en fait sentir. Chaque programme dure de deux à trois jours, et tous les juges qui siègent dans des tribunaux de la famille ont le droit d'y participer et sont encouragés à le faire.

Deux programmes importants en droit pénal sont également présentés chaque année :

- an Un séminaire régional de trois jours est organisé annuellement en octobre et novembre dans quatre localités de la province. Ces séminaires traitent généralement de sujets comme la détermination de la peine et le droit de la preuve, bien qu'une variété d'autres sujets puissent également être inclus. Des programmes similaires sont présentés dans chacune des quatre localités régionales.
- Din séminaire de formation de deux jours et demi est offert au mois de mai, parallèlement à l'assemblée annuelle de la Cour de justice de l'Ontario. Tous les juges qui siègent dans des tribunaux criminels ont le droit d'y participer et sont encouragés à le faire.

En 1998, la Conférence des juges de l'Ontario est devenu responsable du programme de formation en milieu universitaire, qui relevait auparavant soit du Cabinet du juge en chef, soit du Secrétariat de la formation. Il s'agit d'un programme de cinq jours qui a lieu au printemps dans une université ou autre cadre semblable. Il offre à une trentaine de juges l'occasion d'une réflexion approfondie sur des sujets de formation réflexion approfondie sur des sujets de formation réflexion pénal dans un contexte plus théorique.

# II. LES PROGRAMMES DU SECRÉTARIAT

Les programmes planifiés et présentés par le Secrétariat de la formation tendent à traiter de sujets qui ne relèvent pas principalement du droit pénal ni du droit de la famille ou qui peuvent être présentés plus d'une fois, à différents groupes de juges.

I. RÉDACTION DE JUGEMENTS : Il s'agit d'un programme de deux jours présenté à des groupes d'une dizaine de juges selon les fonds disponibles.

Dès leur nomination, tous les juges ont un accès égal à un certain nombre de ressources qui ont une incidence directe ou indirecte sur les activités de la Cour de justice de l'Ontario. Ils ont notamment accès à des textes juridiques, à des services de consultation de recueils de jurisprudence, au Centre de recherche judiciaire de la durisprudence, au Centre de recherche judiciaire de la dinformatique et à des cours sur Quicklaw (base de dondinformatique et à des cours sur Quicklaw (base de donniées et système de recherche juridiques informatisés).

### 7. FORMATION CONTINUE

Les programmes de formation continue offerts aux juges de la Cour de justice de l'Ontario se divisent en deux catégories :

- les programmes présentés par la Conférence des juges de l'Ontario qui, habituellement, sont d'un intérêt particulier pour les juges travaillant dans les domaines du droit pénal et du droit de la famille.
- 2. les programmes présentés par le Secrétariat de la formation.

# DE L'ONTARIO CONFÉRENCE DES JUGES

Les programmes offerts par la Conférence des juges de l'Ontario constituent le **programme de base** de la formation offerte par la Cour de justice de l'Ontario. La Conférence des juges de l'Ontario a deux comités de formation (sur le droit pénal et sur le droit de la famille, respectivement) composés d'un certain nombre de juges, parmi lesquels une personne est habituellement nommée à la présidence de la formation. Ces comités se réunissent selon les besoins et travaillent tout au long de l'année à la planification, à l'élaboration et à long de l'année à la planification, à l'élaboration et à la présentation de programmes de formation de base.

La Conférence des juges de l'Ontario offre trois programmes de formation en droit de la famille : en janvier (Institut de perfectionnement des juges), en mai (parallèlement à l'assemblée annière générale, la Cour) et en septembre. De manière générale, on y traite les sujets suivants : a) la protection de l'enfance; b) le droit de la famille (garde, droits de visite et pensions alimentaires). D'autres sujets notamment le perfectionnement des compétences, notamment le perfectionnement des compétences, la gestion des dossiers, les modifications législatives la gestion des dossiers, les modifications législatives

disponibles. Ce programme est offert à Toronto, et les actions en salle d'audience et les ressources compris la déontologie judiciaire, le comportement tions pratiques touchant l'accès à la magistrature, y après leur nomination. Ce séminaire traite de quesd'une journée pour les nouveaux juges, peu de temps La Cour de justice de l'Ontario organise un séminaire

leur cabinet et a ainsi l'occasion de se familiariser d'audience, se rend avec des juges d'expérience dans la nouvelle juge assiste aux délibérations dans la salle audiences. Durant cette période, le nouveau juge ou expérimentés ou à suivre le déroulement de certaines assermentation) à observer des juges principaux plus temps (habituellement plusieurs semaines avant son ence, la ou le juge se voit affecté pendant quelque de cette région. Suivant sa formation et son expérijuge principal régional doit ensuite l'affecter au sein en chef à l'une des sept régions de la province. Le A sa nomination, la ou le juge est affecté par le juge

Au cours de la première année suivant leur nominaavec ses nouvelles responsabilités.

La formation continue ».) l'Ontario. (Ces programmes figurent à la rubrique « tion qui sont offerts par la Cour de justice de formation touchant leur(s) domaine(s) de spécialisament les juges à participer à tous les programmes de année qui suit leur nomination, on encourage égaleréférences au droit de la famille. Durant la première. cipalement axé sur le droit pénal, avec certaines tique, ce programme intensil d'une semaine est prin-Carling, dans la province de Québec. De nature praenne des juges de cours provinciales (ACJCP) à Lac nouveaux juges, présenté par l'Association canadijuges participent au programme de formation des tion, ou dès que possible par la suite, les nouveaux

préoccupent ou qui les intéressent. moment avec leurs collègues des questions qui les sion (comme tous les juges) de s'entretenir à tout l'Ontario. Les nouveaux juges ont également l'occajustice de l'Ontario par la Conférence des juges de un programme de mentorat mis en place à la Cour de A sa nomination, chaque juge est invité à participer à

> perfectionnement des juges; 6. promouvoir la compréhension du

savoriser le désir permanent d'apprendre

et la réflexion;

établir et maintenir des structures et des

et les objectifs du Secrétariat; systèmes pour mettre en œuvre le mandat

de formation. 9. évaluer le processus et les programmes

approuve en outre tous les programmes de formation offerts à la Cour de justice de l'Ontario. Il examine et administratif et logistique aux programmes de formation Le Secrétariat de la formation fournit un soutien

puisqu'il est responsable de l'affectation des fonds

de la Cour de justice de l'Ontario se divise en deux Le plan de formation actuellement offert aux juges

I. formation de première année;

2. formation continue.

servant à les financer.

I. FORMATION DE

PREMIÈRE ANNÈE

de l'Ontario reçoit un certain nombre de textes et A sa nomination, chaque juge de la Cour de justice

· Propos sur la conduite des juges documents, notamment:

(Conseil canadien de la magistrature)

· Code criminel Martin

la Cour de justice de l'Ontario · Législation sur le droit de la famille de

La conduite d'un procès

ogul ub lounding •

· Manuel du droit de la Jamille

• Règles de la Cour de justice de l'Ontario

en matière criminelle

· La rédaction des motifs

(Conseil canadien de la magistrature) · Principes de déontologie judiciaire

selon les besoins.

# COUR DE JUSTICE DE L'ONTARIO PLAN DE JUSTICE DE L'ONTARIO

Le Secrétariat de la formation adhère au principe de l'importance de la formation pour améliorer l'excellence professionnelle.

Le mandat du Secrétariat de la formation est de favoriser les expériences éducatives qui encouragent les juges à se pencher sur leurs pratiques profession-nelles, à accroître leurs connaissances de fond et à s'engager dans une formation autonome permanente. Pour répondre aux besoins d'une magistrature indépendante, le Secrétariat de la formation:

- favorise la formation en tant que moyen de promouvoir l'excellence;
- soutient et encourage les programmes qui entretiennent et développent la sensibilité aux réalités sociales, éthiques et culturelles.

suivants:
Les objectifs du Secrétariat de la formation sont les

- atimuler le perfectionnement professionnelet personnel continu;
- 2. veiller à ce que la formation réponde aux besoins et aux intérêts de la magistrature provinciale;
- 3. appuyer et encourager les programmes qui assurent un degré élevé de compétence et de connaissances dans les domaines de la preuve, de la procédure et du droit substantiel;
- 4. mieux faire connaître les structures et les ressources des services communautaires et sociaux susceptibles d'appuyer et de compléter les programmes de formation et le travail des tribunaux;
- favoriser la mise à contribution et la participation actives des juges à toutes les étapes de la conceptualisation, de l'élaboration, de la planification, de la prestation et de l'évaluation des programmes;

Les objectifs du Plan de formation continue de la Cour de justice de l'Ontario sont les suivants :

- I. maintenir et développer la compétence professionnelle;
- 2. maintenir et développer la sensibilité aux questions sociales;
- 3. promouvoir le développement personnel.

la Cour. et à y participer pour leur propre bénéfice et celui de choisir des programmes externes qui les intéressent professionnels. On encourage par ailleurs les juges à d'exécution de la loi, à des professeurs et à d'autres appel à des avocats, à des fonctionnaires, à des agents plupart des programmes de formation font largement la planification et la présentation des programmes. La on a souvent recours à des ressources externes pour soient élaborés et présentés par des juges de la Cour, participent les juges de la Cour de justice de l'Ontario Bien qu'un grand nombre des programmes auxquels tionnement des compétences et le contexte social. substantiel, la preuve, la Charte des droits, le perfecannée civile dans des domaines variés, dont le droit d'une dizaine de jours de formation continue par Le plan offre à chaque juge l'occasion de bénéficier

### LE SECRÉTARIAT DE LA FORMATION

La coordination de la planification et de la présentation des programmes de formation est assurée par le Secrétariat de la formation. Ce dernier est composé des personnes suivantes : le juge en chef, en sa capacité de président (d'office), quatre juges nommés par le juge en chef et quatre juges nommés par la Conférence des juges de l'Ontario. Les avocats recherchistes de la Cour de justice de l'Ontario agissent à titre consultatif. Le Secrétariat se réunit environ quatre fois par an pour examiner les questions portant sur la formation et présente ses conclusions au juge en chef. Le mandat et les objectifs du au juge en chef. Le mandat et les objectifs du

Secrétariat sont les suivants :

COUR DE JUSTICE DE L'ONTARIO

**VUNEXE** «C»

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### Classement des dossiers

Une fois que les parties ont été avisées de la décision du CMO, le dossier original de la plainte est rangé dans un classeur verrouillé avec la mention « classé ». Les membres du sous-comité des plaintes retournent deur exemplaire du dossier au greffier pour qu'il soit détruit ou l'informent, par écrit, qu'ils l'ont détruit eux-mêmes. Si l'exemplaire d'un membre ou un avis les deux semaines qui suivent la réunion du comité des deux semaines qui suivent la réunion du comité des deux semaines qui suivent la réunion du comité de deux semaines qui suivent la réunion du comité de des deux semaines qui suivent la réunion du comité dous sous-comité des plaintes pour lui dossier, et en aviser le CMO par écrit, ou le renvoyer dossier, et en aviser le CMO par écrit, ou le renvoyer au CMO, par messager, pour qu'il soit déchiqueté.

final et l'ébauche de lettre au plaignant soumis aux fins d'approbation ne contiennent pas de renseignements susceptibles d'identifier le plaignant ni le juge visé par la plainte. Un double du résumé final est déposé dans chaque dossier de plainte classé ainsi qu'un double de la lettre finale au plaignant indiquant de quelle façon la plainte a été réglée.

### Avis de décision Notification des parties

Une fois que l'ébauche de lettre au plaignant a été approuvée par le sous-comité des plaintes chargé de l'enquête et par le comité d'examen, une lettre finale est préparée et envoyée au plaignant.

Dans les cas où la plainte est rejetée, le plaignant est avisé de la décision du CMO, motifs à l'appui, comme requis à l'alinéa 51.4de la Loi sur les tribunaux judiciaires.

Le CMO a distribué une formule à tous les juges, demandant à chacun d'indiquer au CMO les circonstances dans lesquelles le juge désire être avisé des plaintes dont il fait l'objet et qui sont rejetées. Le CMO a aussi distribué une formule d'adresse à tous les juges pour qu'ils indiquant au CMO l'adresse à laquelle la correspondance concernant les plaintes doit être envoyée.

Les juges à qui l'on a demandé de répondre à une plainte ou qui, à la connaissance du CMO, sont d'une autre façon au courant de la plainte, sont avisés par téléphone de la décision du CMO. Une lettre confirmant la façon dont la plainte a été réglée est également envoyée au juge conformément à ses instructions.

pour lui faire savoir quels dossiers assignés au souscomité des plainte sont prêts, le cas échéant, à être renvoyés devant un comité d'examen. Le sous-comité des plaintes fournit également une copie dument réception des plaintes pour chaque dossier prêt à être renvoyé, et indique quels autres documents au dossier, outre la plainte, doivent être copiés et soumis aux membres du comité d'examen. Aucun renseignement susceptible d'identifier soit le plaignant, soit le juge visé par la plainte n'est inclus dans les documents juge visé par la plainte n'est inclus dans les documents communiqués aux membres du comité d'examen.

Au moins un membre d'un sous-comité des plaintes est présent lorsque le rapport du sous-comité est présenté à un comité d'examen. Les membres du sous-comité des plaintes peuvent aussi participer par téléconférence au besoin.

Comités d'examen

Le président du comité d'examen veille à ce qu'au moins une copie de la page pertinente de la formule de réception des plaintes soit remplie et remise au greffier à la fin de l'audience du comité d'examen.

### Documents préparés pour les réunions

Tous les documents préparés pour les réunions du Conseil de la magistrature de l'Ontario sont confidentiels et ne peuvent ni être divulgués ni rendus publics.

différents dossiers. L'ébauche de résumé et le résumé recommandations du sous-comité des plaintes sur les magistrature lors de la réunion tenue pour étudier les après discussion entre les membres du Conseil de la modifications peuvent être apportées à ces documents réunion prévue du Conseil de la magistrature. Des examiner au moins une semaine avant la date de la communiquées aux membres pour qu'ils puissent les dossier et l'ébauche de lettre au plaignant sont d'entendre le rapport. L'ébauche de résumé du rapport et aux membres du comité d'examen chargé membres du sous-comité des plaintes qui présente le du dossier et une ébauche de lettre au plaignant aux greffier prépare et fait circuler une ébauche de résumé prêt à présenter un rapport à un comité d'examen, le Lorsqu'un sous-comité des plaintes indique qu'il est

l'aider dans son enquête. Si nécessaire, le greffier détermine auprès du plaignant, à quelle étape en est l'instance judiciaire avant d'ordonner une transcription. Le sous-comité des plaintes peut demander au greffier de laisser le dossier en suspens dans l'attente du règlement de l'affaire devant les tribunaux.

lors d'une audience. été faite sous toutes réserves et ne peut pas être utilisée le juge à cette étape de la procédure est réputée avoir d'une réponse. Toute réponse à la plainte fournie par les détails la concernant, il poursuit en l'absence le juge est au courant de la plainte et dispose de tous et que le sous-comité des plaintes est convaincu que dix jours qui suivent la date du courrier recommandé, recommandé. Si aucune réponse n'est reçue dans les lettre de rappel est envoyée au juge par courrier du sous-comité des plaintes sont prévenus et une réponse n'est pas reçue dans les 30 jours, les membres une réponse pour répondre à la plainte. Si une a 30 jours à compter de la date de la lettre demandant au juge avec la lettre demandant la réponse. Un juge documents pertinents au dossier sont communiqués plainte, la transcription (le cas échéant) et tous les particulière soulevée dans la plainte. Une copie de la de répondre à la question ou à la préoccupation du juge, il enjoint au greffier de demander au juge Si un sous-comité des plaintes requiert une réponse

La transcription ou la bande sonore des preuves et les réponses des juges aux plaintes sont envoyées aux membres du sous-comité des plaintes par messagerie, à moins d'indication contraire de leur part.

Un sous-comité des plaintes peut inviter toute partie ou tout témoin à le rencontrer ou à communiquer avec lui au cours de son enquête.

Le secrétaire du CMO transcrit les lettres de plaintes qui sont écrites à la main et apporte aux membres du sous-comité des plaintes le soutien dont ils ont besoin en matière de secrétariat.

Un sous-comité des plaintes peut demander au greffier d'engager des personnes, notamment des avocats, ou de retenir leurs services, pour l'aider dans

la conduite de son enquête (alinéa 51.4(5)).

Avant chaque réunion prévue du CMO, un membre de chaque sous-comité des plaintes est chargé de contacter le greffier adjoint avant une date déterminee

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Pour faciliter la lecture du texte, le masculin est utilisé pour désigner les deux sexes.

accompagnée des recommandations du greffier concernant le dossier, le cas échéant, est préparée à l'intention des membres du sous-comité des plaintes. Un double de tous les documents est placé dans le dossier des plaintes du bureau et dans le dossier des plaintes de chacun des membres.

Un rapport d'étape sur tous les dossiers de plaintes en cours – dont tout renseignement personnel a été supprimé – est communiqué à chaque membre du CMO lors de chacune de ses réunions ordinaires.

### Sous-comité des plaintes

Les membres du sous-comité des plaintes s'efforcent de faire le point sur la situation de tous les dossiers ouverts qui leur sont assignés lorsqu'ils reçoivent leur rapport d'étape tous les mois, et ils prennent les mesures nécessaires pour pouvoir soumettre le dossier au CMO, aux fins d'examen, le plus vite possible.

Une lettre informant les membres du sous-comité des plaintes qu'un nouveau dossier leur a été assigné leur est envoyée à titre d'information, dans la semaine qui suit l'ouverture et l'assignation du dossier. Les membres du sous-comité des plaintes sont invités à indiquer s'ils veulent que leur copie du dossier leur soit délivrée ou qu'elle soit conservée dans le tiroir verrouillé de leur classeur dans le bureau du CMO. Tout membre qui demande qu'une copie du dossier lui soit délivrée doit en accuser réception. Les membres du sous-comité des plaintes peuvent se présenter au bureau du CMO pour examiner leurs dossiers pendant les heures pour examiner leurs dossiers pendant les heures normales de bureau.

Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur sont assignés et d'en discuter dans le mois qui suit leur réception du dossier. Tous les documents (transcriptions, audiocassettes, dossiers des tribunaux, etc.) qu'un sous-comité des plaintes désire examiner en rapport avec une plainte sont obtenus en son nom par le greffier, et non sont obtenus en son nom par le greffier, et non individuellement par les membres du sous-comité.

Suivant la nature de la plainte, le sous-comité des plaintes peut demander au greffier d'ordonner une transcription ou audiocassette de la preuve pour

### **QUESTIONS ADMINISTRATIVES**

### Réception des plaintes

mauvaise conduite de la part du juge provincial. réputé être une plainte alléguant qu'il y a eu l'allégation n'a pas répondu, le résumé écrit est jour suivant l'envoi de ce résumé, si l'auteur de juge provincial en cause sera évaluée. Le dixième la plainte sur la base de laquelle la conduite du quant que l'allégation, telle que résumée, devient adresse est connue, accompagné d'un avis indirecommandé à l'auteur de l'allégation, si son résumé écrit de l'allégation est envoyé par courrier transcrit les détails de la plainte par écrit. Ce la magistrature auquel l'allégation a été faite, avec un avocat et avec le membre du Conseil de suivent l'allégation, le greffier, après consultation Conseil de la magistrature dans les 10 jours qui personne ne soumet pas une plainte par écrit au encouragée à déposer la plainte par écrit. Si cette titre, fait une allégation orale à cet effet, elle est (CMO) ou un membre du Conseil agissant à ce plainte le Conseil de la magistrature de l'Ontario Lorsqu'une personne\*, qui veut saisir d'une

si la plainte est du ressort du CMO (tout juge ou protonotaire provincial – à temps plein ou à temps partiel), un dossier de plainte est ouvert et assigné à un sous-comité des plaintes de d'enquête (les plaintes qui ne sont pas du ressort du CMO sont renvoyées à l'organisme approprié).

le greffier examine chaque lettre de plainte qu'il reçoit et, si la plainte justifie l'ouverture et l'assignation d'un dossier, le greffier détermine s'il est nécessaire ou non d'ordonner une transcription ou une bande sonore de l'instance judiciaire, ou les deux, aux fins d'examen par le sous-comité des plaintes et, dans l'affirmative, demande au greffier adjoint de les ordonner.

la plainte est ajoutée à la formule de repérage, un numèro séquentiel est assigné au dossier, une lettre d'accusé de réception est envoyée au plaignant dans la semaine qui suit la réception de sa plainte, la page un de la formule de réception des plaintes, et remplie, et une lettre,

(Division civile) immédiatement avant le 1° septembre 1990. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le juge qui doit remplacer ce juge.

 Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

3. Les recommandations du sous-comité des plaintes concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, à qui les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

### Plainte contre un protonotaire

Le paragraphe 87 (3) de la Loi sur les tribunaux judiciaires précise que les articles 44 à 51.12 s'appliquent, avec les adaptations nécessaires, aux protonotaires de la même manière qu'aux juges provinciaux

#### PLAINTE

(4) I.78 .rsq

Lorsque le Conseil de la magistrature traite une plainte portée contre un protonotaire, les dispositions spéciales suivantes s'appliquent :

- I. Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un protonotaire. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le protonotaire qui doit remplacer le juge.
- Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.
- Les recommandations du sous-comité concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, auquel les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

Si le juge en chef de la Cour de justice de l'Ontario est suspendu en attendant une décision définitive concernant la plainte portée contre lui, les approbations annuelles qui seraient par ailleurs accordées ou refusées par le juge en chef de la Cour de justice de l'Ontario sont accordées ou refusées par le juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait ce qu'une décision définitive concernant la plainte ait

#### par. 50 (2)(b)

Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé au Conseil de la magistrature fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait qu'une décision définitive concernant la plainte ait

. serre prise.

été prise.

par. 50 (3)

### Plainte contre un juge de la Cour des petites créances

Le paragraphe 87.1 (1) de la Loi sur les tribunaux judiciaires et certaines dispositions spéciales s'appliquent aux juges provinciaux qui ont été affectés à la Cour provinciale (Division civile) immédiatement avant le let septembre 1990.

#### **PLAINTES**

Lorsque le Conseil de la magistrature traite une plainte portée contre un juge provincial qui a été affecté à la Cour provinciale (Division civile) immédiatement avant le 1° septembre 1990, les dispositions spéciales suivantes s'appliquent :

I. Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un juge provincial qui a été affecté à la Cour provinciale

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simultanée des témoignages, des observations ou des discussions qui ont lieu dans l'autre langue et à une traduction des documents déposés ou des motifs ou rapports rédigés dans l'autre langue.

par. 51.2 (8)

## Plainte contre le juge en chef ou certains autres juges

Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte, le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise. Le juge en chef adjoint de la Cour de justice de l'Ontario nommé au conseil préside les réunions et les audiences du Conseil au lieu du juge en chef et nomme les membres temporaires du Conseil jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

#### par. 50 (1)(a) et (b)

Tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario (par un sous-comité des plaintes après son enquête, par le celui-ci après son examen du rapport du sous-comité des plaintes ou le renvoi de la plainte ou par le fait au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario, jusqu'à ce qu'une décision définitive concernant la plainte contre le juge en chef de la Cour de justice concernant la plainte contre le juge en chef de la Cour de justice de l'Ontario, jusqu'à ce qu'une décision définitive concernant la plainte contre le juge en chef de la Cour de justice de l'Ontario ait été prise.

#### par. 50 (1)(c)

Si le juge en chef de la Cour de justice de l'Ontario est suspendu en attendant une décision définitive concernant la plainte portée contre lui, les plaintes qui seraient par ailleurs renvoyées au juge en chef de la Cour de justice de l'Ontario sont renvoyées au juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (2)(a)

Laudience sur une plainte tenue par le Conseil de la magistrature est menée en anglais, mais le plaignant ou le témoin qui parle français ou le juge qui fait l'objet d'une plainte et qui parle français a droit, sur demande, avant l'audience, a une traduction en français des documents qui sont en anglais et qui seront examines a l'audience; aux services d'un interprète à l'audience; et à l'interprétation simultanée en français l'audience; et à l'interprétation simultanée en français des parties de l'audience qui se déroulent en anglais.

#### par. 51.2 (3)

Le droit à la traduction et aux services d'un interprète s'applique également aux médiations et à l'examen de la question de l'indemnisation, s'il y a lieu.

#### par. 51.2 (4)

Lorsque le plaignant ou le témoin parle français ou que le juge qui fait l'objet de la plainte parle français, le Conseil de la magistrature peut ordonner que l'audience ou la médiation sur la plainte soit bilingue s'il est d'avis qu'elle peut être menée convenablement de cette manière.

#### par. 51.2 (5)

Un ordre prévu au paragraphe 5) peut s'appliquer à une partie de l'audience ou de la médiation, auquel cas les paragraphes 7) et 8) ci-dessous s'appliquent avec les adaptations nécessaires.

#### par. 51.2 (6)

Au cours d'une audience ou d'une médiation bilingue : a) les témoignages oraux et les observations orales peuvent être présentés en français ou en anglais et ils sont consignés dans la langue de présentation;

l'une ou l'autre langue; b) les documents peuvent être déposés dans

c) dans le cas d'une médiation, les discussions peuvent avoir lieu dans l'une ou l'autre langue;

d) les motifs d'une décision ou le rapport du médiateur, selon le cas, peuvent être rédigés dans l'une ou l'autre langue.

#### (7) 2.18 arq

Lors d'une audience ou d'une médiation bilingue, si le plaignant ou le juge ne parle qu'une des deux langues, il a droit, sur demande, à l'interprétation

#### DETVI DE KELONZE

de celui-ci et la conclusion initial du Conseil. compte les besoins spéciaux du juge selon la requête une ordonnance sera rendue pour prendre en pas d'observation et n'accuse pas réception de l'avis, dans son avis au ministre que si celui-ci ne présente répondre. Le Conseil de la magistrature précisera de la demande et de l'indication de son intention de soixante (60) jours suivant son accusé de réception observations sur la demande, il doit le faire dans les cette demande. Si le ministre prévoit de faire des magistrature de son intention de répondre ou non à Dans ce délai, le ministre avisera le Conseil de la trente (30) jours civils suivant la réception de l'avis. juge, demandera au ministre de répondre dans les d'une demande de prise en compte des besoins d'un Le conseil de la magistrature, lorsqu'il avisera le ministre

## PU CONTENU L'ORDONNANCE

Lorsque le délai indiqué dans l'avis au ministre s'est écoulé ou, le cas échéant, lorsqu'il reçoit des observations du ministre concernant un « préjudice injustifié » éventuel, le Conseil de la magistrature de l'Ontario doit se réunir dès que possible pour décider du contenu de l'ordonnance qu'il va rendre pour prendre en cause les besoins du juge. Dans ses conclusions, le Conseil pièces justificatives présentées par le juge ainsi que des observations, s'il y en a, concernant la question du « préjudice injustifié ».

#### COPIE DE L'ORDONNANCE

On remettra une copie de l'ordonnance au juge et à toute personne touchée par cette ordonnance dans les dix (10) jours civils suivant la date à laquelle l'ordonnance est rendue.

#### CONSIDÉRATIONS SPÉCIALES

### Plaignants on juges francophones

Les plaintes contre des juges provinciaux peuvent être portées en français ou en anglais.

par. 51.2 (2)

jurisprudence en matière de Droits de la personne pour ce qui est de la définition d'une « invalidité » (ou handicap).

Le Conseil de la magistrature considèrera qu'une condition correspond à une invalidité si elle peut nuire à l'aptitude du juge à s'acquitter des obligations essentielles de son poste.

#### NOTIFICATION DU MINISTRE

S'il est convaincu que la condition répond au critère de qualification d'une invalidité et s'il envisage de rendre une ordonnance pour prendre en compte cette invalidité, le Conseil de la magistrature doit fournir dès que possible au Procureur général une copie de la demande de prise en compte de l'invalidité, accompagnée du rapport du sous-comité des besoins spéciaux. Ce rapport doit inclure tous les éléments dont le souscomité a tenu compte pour formuler son opinion sur comité a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

## OBSERVATIONS QUANT À UN PRÉJUDICE INJUSTIFIÉ

Le Conseil de la magistrature invitera le ministre à faire des observations, par écrit, sur le fait qu'une ordonnance que le Conseil envisage de rendre pour la prise en compte des besoins d'un juge ayant une invalidité causera ou non un « préjudice injustifié » au ministère du Procureur général ou à tout autre personne touchée par l'ordonnance en question. Le au ministre, ou à toute autre personne que l'ordonnance obligerait à tenir compte des besoins du juge, de prouver que cette prise en compte des besoins du juge, de prouver que cette prise en compte des besoins causerait un préjudice injustifié.

Pour déterminer s'il y a ou non préjudice injustifié, le Conseil de la magistrature s'appuiera sur la jurisprudence en matière de Droits de la personne concernant ce sujet, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

### SOUS-COMITÉ DES BESOINS SPÉCIAUX

Lorsqu'il reçoit une demande, le Conseil convoque un sous-comité (« sous-comité des besoins spéciaux ») du Conseil comprenant deux membres du Conseil, l'un étant juge et l'autre non. Dès que possible, ce sous-comité rencontre le requérant ainsi que toute personne qui, de l'avis du sous-comité, pourrait être ordonnée de tenir compte des besoins du juge; le sous-comité engage les experts et conseillers dont il pourrait avoir besoin pour formuler une opinion sur les aspects suivants et en faire part au Conseil :

• la durée pendant laquelle les dispositions matérielles ou le service seraient requis pour tenir compte de l'invalidité du juge;

• le coût approximatif des dispositions matérielles ou du service requis pour tenir compte de l'invalidité du juge pendant la durée que ces dispositions ou ce service seraient requis (p. ex., quotidien, hebdomadaire, mensuel, annuel).

### RAPPORT DU SOUS-COMITÉ DES BESOINS SPÉCIAUX

Le sous-comité des besoins spéciaux doit inclure dans le rapport qu'il présente au Conseil tous les éléments dont il a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

Si, après avoir rencontré le requérant, le sous-comité est d'avis que celui-ci ou celles-ci ne souffre pas d'une invalidité, il doit en informer le conseil dans son rapport.

## LA DEMANDE ET RAPPORT

Le Conseil de la magistrature doit se réunir dès que possible afin d'examiner la demande du requérant et déterminer si la demande entre dans le cadre d'une obligation prévue par la loi de tenir compte des besoins spéciaux sans préjudice injustifié.

### CRITERE DE QUALIFICATION EN TANT QU'INVALIDITÉ

Pour déterminer si une ordonnance de prise en compte de l'invalidité d'un juge est justifiée ou non, le Conseil de la magistrature s'appuiera sur la

## BENDNE Y LISSNE D'UNE AUDIENCE ORDONNANCE DE PRISE EN COMPTE

Si, après avoir tenu une audience portant sur une plainte, le Conseil de la magistrature conclut que le juge qui faisait l'objet de la plainte n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de le faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

#### par. 51.6 (13)

### DIRECTIVES ET RÈGLES DE PROCÉDURE

Les directives et règles de procédures qui suivent ont été établies par le Conseil de la magistrature de l'Ontario relativement à la prise en compte des invalidités.

### PRÉSENTATION DE LA REQUÊTE PAR ÉCRIT

Un juge qui souhaite que ses besoins soient pris en compte doit présenter une requête écrite contenant les renseignements suivants :

 une description de l'invalidité à prendre en compte;

 une description des obligations essentielles du poste pour lesquelles la prise en compte des

besoins du juge est nécessaire;
 une description des dispositions matérielles ou

du juge; du juge;

• une lettre signée par un docteur ou un autre professionnel de la santé qualifié (chiropraticien, physiothèrapeute, etc.) justifiant la demande du inge.

• la demande et les pièces justificatives ne peuvent pas être utilisées, sans le consentement du requérant, aux fins d'une enquête ou d'une audience autre que l'audience tenue pour examiner la question de la prise en compte des besoins du juge;

• le Conseil de la magistrature de l'Ontario ne peut divulguer ou rendre publics la demande et les pièces justificatives sans le consentement du requérant.

### DROIT DE VOTE DU PRÉSIDENT

Le président a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant

par. 49 (10)

#### **диовим**

Huit membres du Conseil de la magistrature, y compris le président, constituent le quorum pour les réunions qui portent sur une demande de prise en compte d'une invalidité. Au moins la moitié des membres présents doivent être des juges et au moins quatre autres membres ne doivent pas être des juges.

par. 49 (13)

#### AIDE D'EXPERTS

Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider.

par. 49 (21)

#### DOSSIERS CONFIDENTIELS

ou d'une audience du Conseil. exclusivement aux fins de la médiation ou d'une réunion renseignements confidentiels et n'ont pas été préparés n'ont pas été traités comme des documents ou est exigée par la Loi sur les tribunaux judiciaire ou qui dont la divulgation par le Conseil de la magistrature la divulgation de renseignements ou de documents magistrature ou son sous-comité ne peut pas interdire général ou d'une autre personne. Le Conseil de la possession du Conseil de la magistrature, du procureur que les renseignements ou les documents soient en la ne soit pas divulgué ni rendu public. Ceci s'applique Conseil qui a été tenue à huis clos soit confidentiel et à une médiation ou à une réunion ou audience du ordonner que tout renseignement ou document relatif Le Conseil de la magistrature ou un sous-comité peut

#### par. 49 (24), (25) et (26)

Le Conseil de la magistrature établit et rend publiques ses propres règles de procédure, y compris... des directives et les règles de procédure relatives à la prise en compte des invalidités.

par. 51.1 (1)

moins qu'il ne soit tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du ou de la juge dans la mesure qui permette à celui-ci ou celle-ci de s'acquitter de ces obligations.

par. 45 (2)

#### PRÉJUDICE INJUSTIFIÉ

Le paragraphe 45 (2) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

par. 45 (3)

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

Lorsqu'il traite des requêtes prévues au présent article, le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1~(1).

par. 45 (4)

#### PARTICIPATION

Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe 45 (2) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

par. 45 (5)

#### LA COURONNE EST LIEE

L'ordonnance rendue par le Conseil de la magistrature pour tenir compte des besoins d'un juge lie la Couronne.

par. 45 (6)

#### PRÉSIDENCE DES RÉUNIONS

Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside les réunions qui portent sur la prise en compte d'une invalidité.

par. 49 (8)

.(8) 0.15 odgergerøg

#### ET LA PROTECTION DE LA VIE PRIVÈE LOI SUR LACCÈS À L'INFORMATION MODIFICATIONS APPORTÉES À LA

protection de la vie privée est modifié par adjonction Larticle 65 de la Loi sur l'accès à l'information et la

des paragraphes suivants:

recueillis relativement à l'évaluation. tribunaux judiciaires ni aux renseignements d'un juge prévue à l'article 51.11 de la Loi sur les soit qui est compris dans l'évaluation du rendement (4) La présente loi ne s'applique pas à quoi que ce

: ənbildde's général, si l'une quelconque des conditions suivantes soit en la possession de celui-ci ou du procureur du Conseil de la magistrature de l'Ontario, qu'il (5) La présente loi ne s'applique pas à un document

gués ni rendus publics. ments qui y sont contenus ne soient pas divula ordonné que le document ou les renseigne-Le Conseil de la magistrature ou son sous-comité

déterminé que le document est confidentiel. 2. Le Conseil de la magistrature a par ailleurs

la magistrature qui s'est tenue à huis clos. ane réunion ou une audience du Conseil de Le document a été préparé relativement à

#### DES INVALIDITÉS PRISE EN COMPTE

#### REQUETE D'ORDONNANCE

pour qu'il soit tenu compte de ces besoins. la magistrature pour que soit rendue une ordonnance de ses besoins peut présenter une requête au Conseil de essentielles du poste à moins qu'il ne soit tenu compte raison d'une invalidité, de s'acquitter des obligations Le juge provincial qui croit ne pas être en mesure, en

par. 45 (I)

#### DE LA MAGISTRATURE OBLIGATION DU CONSEIL

de s'acquitter des obligations essentielles du poste à juge n'est pas en mesure, en raison d'une invalidité, Si le Conseil de la magistrature conclut qu'un ou une

> conformément aux critères établis aux termes du roqqer əl ensb əugluvib tios mon nos əup ənnobto'n dans le rapport, à moins que le Conseil de la magistrature s'est tenue à huis clos, le juge ne doit pas être identifié dans le rapport au procureur général ou, si l'audience

par. 51.6 (19)

### INTERDICTION DYDENTIFIER LE JUGE

jamais rendus publics sans le consentement de celui-ci. à la plainte qui pourraient identifier le juge ne soient magistrature ordonne que les renseignements relatifs rapport sans son consentement et le Conseil de la pas fondée, le juge ne doit pas être identifié dans le ultérieurement la plainte en concluant qu'elle n'était Conseil de la magistrature, et que le Conseil rejette paragraphe 51.6 (10) et aux critères établis par le le juge qui fait l'objet de la plainte, conformément au publication de renseignements qui pourraient identifier en attendant une décision concernant une plainte, la de la magistrature a rendu une ordonnance interdisant, Si, au cours de l'audience sur une plainte, le Conseil

par. 51.6 (20)

#### OKDONNANCE DE NON-DIVULGATION

général ou d'une autre personne. possession du Conseil de la magistrature, du procureur que les renseignements ou les documents soient en la soit confidentiel et ne soit pas divulgué ni rendu public, ou audience du Conseil qui a été tenue à huis clos document relatif à une médiation ou à une réunion plaintes peut ordonner que tout renseignement ou Le Conseil de la magistrature ou un sous-comité des

par. 49 (24) et (25)

#### **EXCEPTION**

ou d'une audience du Conseil. exclusivement aux fins de la médiation ou d'une réunion renseignements confidentiels et n'ont pas été préparés n'ont pas été traités comme des documents ou des exigée par la Loi sur les tribunaux judiciaires ou qui divulgation par le Conseil de la magistrature est pas aux renseignements ni aux documents dont la Les dispositions énoncées ci-dessus ne s'appliquent

par. 49 (26)

qui fait l'objet de la plainte peuvent être révélées au Conseil de la magistrature, ou à un comité d'examen de celui-ci, et la plainte est examinée à huis clos.

(71) 19 (81) 4.12.1aq

#### POSSIBILITÉ DE TENIR L'AUDIENCE À HUIS CLOS

Le Conseil de la magistrature peut tenir la totalité ou une partie de l'audience à huis clos s'il décide, conformément aux critères établis aux termes du paragraphe 51.1 (1), que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience l'emportent sur ceux de la tenue d'une audience

.ənbilduq

## рак. 51.6 (7)

## TE NOW DO ÎNCE INLERDICLION DE DIANTGNEK

Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulent ni rendu mublic

divulgué ni rendu public.

#### par. 51.6 (8)

## ORDONNANCE INTERDISANT

Dans des circonstances exceptionnelles et conformément au paragraphe 51.1 (1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

par. 51.6 (10)

#### CRITÈRES ETABLIS

On trouvera aux page B-II ci-dessus les critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1) relativement aux paragraphes 51.6 (7) (8) (7) (10)

.(01) 19 (8),(7) 6.12).

#### RAPPORT AU PROCUREUR GENERAL

Si le plaignant ou un témoin a demandé que son identité soit dissimulée au cours de l'audience et qu'une ordonnance a été rendue en ce sens aux termes du paragraphe 51.6 (9), il ne doit pas être identifié

huis clos, conformément aux paragraphes 51.4 (6), 51.4 (17) et (18). Le Conseil de la magistrature a pour politique, conformément aux paragraphes 51.4 (21) et (22), de ne pas confirmer ni nier qu'il a été saisi d'une plainte donnée, comme le permet le paragraphe 51.3 (5), à moins que le Conseil de la magistrature, ou un comité d'audience de celui-ci, n'ait déterminé que la plainte fera l'objet d'une audience publique.

## ENQUÊTE À HUIS CLOS PAR UN SOUS-COMITÉ DES PLAINTES

L'enquête menée sur une plainte par un sous-comité des plaintes se déroule à huis clos. La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité liées à l'enquête sur une plainte.

par. 51.4 (6) et (7)

## DU COMITÉ D'EXAMEN

Le Conseil de la magistrature, ou un comité d'examen de celui-ci :

à huis clos, et peut approuver la décision du

sous-comité; peut exiger du sous-comité des plaintes qu'il

examine le rapport du sous-comité des plaintes,

 peut exiger du sous-comité des plaintes qu'il renvoie la plainte au Conseil.

par. 51.4 (17)

Si la plainte est renvoyée au Conseil par un souscomité des plaintes, le Conseil de la magistrature, ou un comité d'examen de celui-ci, l'examine, à huis clos, et peut, selon le cas:

- · tenir une audience;
- rejeter la plainte;
- renvoyer la plainte au juge en chef (en assortissant ou non le renvoi de conditions);
- renvoyer la plainte à un médiateur.

par. 51.4 (18)

## DU JUGE AU COMITÉ D'EXAMEN

Si le sous-comité renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une audience, l'identité du plaignant et celle du juge

THE BUILDING

## LISSUE D'UNE AUDIENCE REJET DE LA PLAINTE À

Si la plainte est rejetée à l'issue d'une audience, le Conseil de la magistrature recommande au procureur général que le juge soit indemnisé pour ses frais pour services juridique et indique le montant de l'indemnité.

#### par. 51.7 (5)

#### DIVULGATION DU NOM

Dans sa recommandation au procureur général, le Conseil de la magistrature fournit le nom du juge, mais le procureur général ne doit pas le divulguer à moins qu'il n'y ait eu une audience publique sur la plainte ou que le Conseil n'ait, par ailleurs, rendu public le nom du juge.

#### par. 51.7 (6)

#### MONTANT ET VERSEMENT DE L'INDEMNITÉ

Le montant de l'indemnité recommandé peut se rapporter à tout ou partie des frais pour services juridiques du juge et est calculé selon un taux pour services juridiques qui ne dépasse pas le taux maximal normalement prévu par le gouvernement de l'Ontario pour des services similaires. Le procureur général verse pour des services similaires. Le procureur général verse l'indemnité au juge conformément à la recommandation.

#### par. 51.7 (7) et (8)

## CONFIDENTIALITÉ ET PROTECTION DE LA VIE PRIVÉE

#### RENZEIGNEMENTS AU PUBLIC

A la demande de toute personne, le Conseil de la magistrature peut confirmer ou nier qu'il a été saisi d'une plainte donnée.

#### par. 51.3 (5)

## DE LA MAGISTRATURE

L'enquête du sous-comité des plaintes sur une plainte ou est tenue à huis clos, et son rapport sur la plainte ou le renvoi de la plainte au Conseil de la magistrature, ou à un comité d'examen de celui-ci, est examiné à

Cour de justice de l'Ontario. Il s'applique aussi à un juge en chef adjoint, que le Conseil de la magistrature a maintenu en fonction comme juge en chef ou juge en chef adjoint de la Cour de justice de l'Ontario, ou comme juge provincial.

#### (4) 8.13 .1sq

### INDEWNILE

## ONCERNANT UNE PECISION É LISSUE D'UNE DÉCISION

question de l'indemnisation. le Conseil de la magistrature lui joint l'examen de la l'indemnisation. S'il tient une audience sur la plainte, les services juridiques en rapport avec la question de magistrature, ou un comité d'examen de celui-ci, et l'audience tenue sur une plainte par le Conseil de la la magistrature, ou un comité d'examen de celui-ci, l'examen du rapport d'un médiateur par le Conseil de de la magistrature, ou un comité d'examen de celui-ci, du rapport du sous-comité des plaintes par le Conseil et l'enquête par un sous-comité des plaintes, l'examen suivie en rapport avec la plainte, y compris l'examen juridiques qu'il a engagés relativement à la démarche en totalité ou en partie, pour les frais pour services question de savoir si le juge devrait être indemnisé, provincial, le Conseil de la magistrature étudie la Lorsqu'il a traité une plainte portée contre un juge

#### par. 51.7 (1) et (2)

#### EXAMEN PUBLIC OU À HUIS CLOS

L'examen de la question de l'indemnisation est ouvert au public s'il y a eu une audience publique sur la plainte; sinon, l'examen se fait à huis clos.

#### par. 51.7 (3)

#### RECOMMANDATION

S'il est d'avis que le juge devrait être indemnisé, le Conseil de la magistrature fait une recommandation en ce sens au procureur général, laquelle recommandation indique le montant de l'indemnité.

par. 51.7 (4)

### Destitution des Jonetions

#### DESTITUTION

conditions suivantes sont réunies: Un juge provincial ne peut être destitué que si les

- Conseil de la magistrature; a) une plainte a été portée à son sujet devant le
- : sainsvine des raisons suivantes : de remplir convenablement ses fonctions ou juge en raison du fait qu'il est devenu incapable recommande au procureur général la destitution du b) le Conseil de la magistrature, à l'issue d'une audience,
- n'a pas remédié à l'inaptitude); compte de ces besoins, ou a été rendue mais personne à laquelle il incomberait de tenir qu'elle causerait un préjudice injustifié à la l'inaptitude ou ne pourrait être rendue parce compte de ses besoins ne remédierait pas à poste (si une ordonnance pour qu'il soit tenu s'acquitter des obligations essentielles de son (i) il est inapte, en raison d'une invalidité, à
- l'exercice convenable de ses fonctions; (ii) il a eu une conduite incompatible avec

(iii) il n'a pas rempli les fonctions de sa charge.

#### par. 51.8 (I)

#### DEPÔT DE LA RECOMMANDATION

jours qui suivent le début de la session suivante. Si celle-ci ne siège pas, il la dépose dans les quinze Conseil de la magistrature devant l'Assemblée législative. Le procureur général dépose la recommandation du

par. 51.8 (2)

#### DÉCRET DE DESTITUTION

demande de l'Assemblée législative. vue de la destitution d'un juge provincial sur Le lieutenant-gouverneur peut prendre un décret en

(£) 8.15 .1sq

#### APPLICATION

de la retraite a été approuvé par le juge en chef de la provinciaux dont le maintien en fonction après l'âge pas encore atteint l'âge de la retraite et aux juges Cet article s'applique aux juges provinciaux qui n'ont

#### INTERDICTION DYDENTIFIER LE JUGE

le consentement de celui-ci. identifier le juge ne soient jamais rendus publics sans renseignements relatifs à la plainte qui pourraient et le Conseil de la magistrature ordonne que les le rapport au procureur général sans son consentement n'était pas fondée, le juge ne doit pas être identifié dans rejette ultérieurement la plainte en concluant qu'elle page B-11 ci-dessus) et que le Conseil de la magistrature établis par le Conseil de la magistrature (se reporter à la paragraphe 51.6 (10) et conformément aux critères le juge qui fait l'objet de la plainte, aux termes du publication de renseignements qui pourraient identifier en attendant une décision concernant une plainte, la de la magistrature a rendu une ordonnance interdisant, Si, au cours de l'audience sur une plainte, le Conseil

par. 51.6 (20)

### sompte des besoins du juge Ordonnance pour qu'il soit tenu

permette à celui-ci de s'acquitter de ces obligations. tenu compte des besoins du juge dans la mesure qui besoins, le Conseil de la magistrature ordonne qu'il soit mesure de s'en acquitter s'il était tenu compte de ses général de destitution du juge, mais que le juge serait en à l'exception d'une recommandation au procureur soit rejetée ou qu'elle donne lieu à quelque autre décision des obligations essentielles du poste, que cette plainte sur le fait que le juge n'est pas en mesure de s'acquitter Si un facteur de la plainte était qu'une invalidité influe

s'il y en a. a, et des exigences en matière de santé et de sécurité, coût, des sources extérieures de financement, s'il y en tenir compte des besoins du juge, compte tenu du préjudice injustifié à la personne à qui il incombe de ordonnance s'il est convaincu que ce fait causerait un Le Conseil de la magistrature ne peut rendre cette

présenter des observations. que celle-ci ait eu l'occasion de participer et de du juge qui vise une personne sans avoir fait en sorte ordonnance pour qu'il soit tenu compte des besoins Le Conseil de la magistrature ne doit pas rendre une

la Couronne. d'un juge rendue par le Conseil de la magistrature lie Une ordonnance pour qu'il soit tenu compte des besoins

sanction.

.(8,18

f) suspendre le juge sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours; ou

g) recommander au procureur général la destitution du juge (conformément à l'article

par. 51.6 (11)

### COMBINAISON DE SANCTIONS

Le Conseil de la magistrature peut adopter toute combinaison des sanctions susmentionnées, sauf la recommandation au procureur général de destitution du juge, qui ne peut être combinée avec aucune autre

par. 51.6 (12)

### Rapport au procureur général

#### RAPPORT

Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision (sous réserve d'une ordonnance rendue par le Conseil de la magistrature au sujet du maintien du caractère confidentiel des documents) et le procureur général peut rendre le rapport public s'il le procureur général peut rendre le rapport public s'il set d'avis qu'il y va de l'intérêt public.

par. 51.6 (18)

#### DISSIMULATION DE L'IDENTITÉ

Si le plaignant ou un témoin a demandé que son identité soit dissimulée au cours de l'audience et qu'une ordonnance a été rendue aux termes du paragraphe 51.6 (9), il ne doit pas être identifié dans le rapport au procureur général ou, si l'audience s'est tenue à huis clos, le juge ne doit pas être identifié dans le rapport, à moins que le Conseil de la magistrature n'ordonne que son nom soit divulgué dans le rapport conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.6 (8) (se reporter à la page B-11 ci-dessus).

par. 51.6 (19)

(e) décision sur toute revendication de privilège de non-divulgation à l'égard des éléments de preuve qu'il est prévu de présenter lors de l'audience;

(f) toute question relative aux échéances.

- (2) Aucune requête concernant l'une quelconque des mesures de redressement visées dans cet article ne peut être présentée au cours de l'audience sans l'autorisation du Comité d'audience, à moins qu'elle ne porte sur la façon dont l'audience est conduite.
- (3) Le Comité d'audience peut, pour tout motif qu'il estime approprié, réduire la limite de temps prévue dans les présentes règles pour la présentation des requêtes avant une audience.
- 19. Le Conseil fixe, dès que raisonnablement possible, la date et le lieu pour la présentation, par les deux parties, de toute requête soumise aux termes du paragraphe 19 1) et prend une décision à ce sujet dès que raisonnablement possible.

#### **VPRES LAUDIENCE**

### Prise d'une décision à l'issue d'une audience

#### DECISION

Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclut ou non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconduite de la part du juge, il peut, selon le cas :

a) donner un avertissement au juge;

b) réprimander le juge;

c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;

d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;

e) suspendre le juge avec rémunération, pendant une période quelle qu'elle soit;

I CO LINE NO.

présentation ou après la présentation des éléments de preuve de celui-ci. L'intimé peut ensuite présenter ses propres éléments de preuve.

- (d) Tous les témoins peuvent être contreinterrogés par l'avocat de la partie adverse puis être interrogés à nouveau au besoin.
- (e) Laudience doit faire l'objet d'un compterendu sténographique et une transcription doit en être fournie sur demande, on doit lui fournir la transcription de l'audience gratuitement et dans un délai raisonnable.
- (f) Tant l'avocat chargé de la présentation que l'intimé peuvent présenter et proposer au comité d'audience des constatations, des conclusions, des recommandations ou des ébauches de décisions.
- (g) En conclusion de l'audience, l'avocat chargé de la présentation et l'avocat de l'intimé font, dans l'ordre déterminé par le Conseil, une déclaration faisant la synthèse des éléments de preuve et de toute question de droit soulevée par ces éléments.

#### DÉCISIONS PRÉALABLES À LAUDIENCE

- 18. Au plus tard 10 jours avant la date fixée pour le début de l'audience, l'une ou l'autre des parties peut présenter au comité d'audience une requête concernant une question de procédure ou autre qui doit faire l'objet d'une décision avant l'audience.
- (1) Sans limiter la portée générale de ce qui précède, ces requêtes peuvent porter sur les points suivants :
- (a) objection quant à la compétence du Conseil d'instruire la plainte;
- (b) résolution de toute question relative à des craintes raisonnables de partialité personnelle ou institutionnelle de la part du Comité;
- (c) objection quant à la suffisance de divulgation; de la part l'avocat chargé de la présentation;
- (d) décision sur une question de droit quelconque afin d'accélérer le déroulement de l'audience;

#### CONFÉRENCE PRÉPARATOIRE

14. Le Comité peut ordonner de tenir une conférence préparatoire devant un juge qui est membre du Conseil mais ne fait pas partie du Comité qui entendra les accusations portées contre l'intimé, afin de limiter les points en litige et de promouvoir un règlement à l'amiable.

#### LAUDIENCE

- 15. Pour plus de certitude, l'intimé a le droit de se faire représenter par un avocat ou d'agir en son propre nom pour toute audience tenue conformément à ce code.
- L6. Si l'avocat chargé de la présentation ou l'intimé en fait la demande à un moment quelconque, le Comité peut exiger que quiconque, par assignation, fasse un témoignage sous serment ou une déclaration lors de l'audience et présente, à titre d'élèments de preuve, tout document ou objet, que le Comité preuve, tout document ou objet, que le Comité précise, qui est en rapport avec la question faisant l'objet de l'audience et admissible à l'audience.
- (1) Toute assignation ordonnée aux termes du présent article doit être présentée sous la forme prescrite dans le paragraphe 12(2) de la Loi sur l'exercice des compétences légales.
- de membres du Conseil qui n'ont pas participé au sous-comité des plaintes chargé d'enquêter sur la plainte ni au comité d'examen qui a examiné sur la plainte ni au comité des plaintes. le report du sous-comité des plaintes.
- (1) Les directives suivantes s'appliquent à la conduite de l'audience à moins que le Comité, sur motion présentée par une autre partie ou par consentement, n'en décide autrement.
- (a) Tous les témoignages doivent être faits sous serment, affirmation solennelle ou promesse.
- (b) Lavocat chargé de la présentation doit ouvrir l'audience par une déclaration préliminaire et poursuivre en présentant les éléments de preuve à l'appui des accusations contenues dans l'avis d'audience, par interrogation directe des témoins.
- (c) Lavocat représentant l'intimé peut faire une déclaration préliminaire immédiatement après la déclaration préliminaire de l'avocat chargé de la

Une preuve de la signification doit être conservée dans les dossiers du Conseil.

#### REPONSE

- 9. Lintimé peut signifier à l'avocat chargé de la présentation et déposer auprès du Conseil une réplique aux accusations rapportées dans l'avis d'audience.
- (1) La réponse peut contenir tous les détails des faits sur lesquels l'intimé s'appuie.
- (2) Le répondant peut en tout temps, avant ou durant l'audience, signifier à l'avocat chargé de la présentation et auprès du Conseil une réplique modifiée.
- (3) Le fait que l'intimé ne dépose aucune réplique ne doit pas être considéré comme son admission d'une accusation quelconque portée contre lui à son encontre.

#### DIVULGATION

- 10. Avant l'audience, l'avocat chargé de la présentation doit faire parvenir à l'intimé ou à son avocat les nom et adresse de tous les témoins que l'on sait au courant des faits pertinents ainsi qu'une copie de toutes les déclarations faites par le témoin et des résumés des entrevues avec le témoin avant l'audience.
- 11. Lavocat chargé de la présentation doit aussi fournit, avant l'audience, tous les documents non privilégiés en sa possession se rapportant aux accusations mentionnées dans l'avis d'audience.
- 12. Le Comité d'audience peut interdire à l'avocat chargé de la présentation d'appeler à l'audience un témoin dont le nom et l'adresse, s'ils sont connus, ou les déclarations ou le résumé des entrevues, n'auraient pas été communiqués à l'intimé avant l'audience.
- 13. La partie V s'applique, avec les adaptations nécessaires, à tout renseignement porté à l'attention de l'avocat chargé de la présentation après qu'il ait communiqué l'information conformément à cette partie.

la présentation de l'exposé des faits à l'encontre de l'intime.

- 3. Lavocat-conseil engagé par le Conseil agit indépendamment de celui-ci.
- Le mandat de l'avocat-conseil engagé dans ce contexte n'est pas d'essayer d'obtenir une décision particulière à l'encontre d'un intimé, mais de veillet à ce que la plainte portée contre le juge soit évaluée de façon rationnelle et objective afin de parvenir à une décision juste.
- Pour plus de certitude, l'avocat chargé de la présentation ne doit conseiller le Conseil sur aucune des questions qui sont soumises à celui-ci. Toutes les communications entre l'avocat chargé de la présentation et le Conseil doivent, dans le cas de communications directes, se faire en présence de l'avocat représentant l'intimé ou, dans le cas de communications écrites, avec copie aux intimés.

#### **VAIS D'AUDIENCE**

- 6. Laudience doit être précédée d'un avis d'audience conformément à cette section.
- 7. Lavocat chargé de la présentation doit rédiger un avis d'audience.
- (1) Lavis d'audience doit contenir les éléments suivants :
- (a) détails des accusations portées à l'encontre de l'intimé;
- (b) référence à la loi en vertu de laquelle l'audience sera tenue;
- (c) déclaration indiquant la date, l'heure et le lieu de l'audience;
- (d) déclaration indiquant l'objet de l'audience;
- (e) déclaration précisant que si l'intimé n'est pas présent à l'audience, le Comité peut tenir l'audience en son absence et l'intimé n'aura droit à aucun autre avis de l'instance.
- 8. Lavocat chargé de la présentation doit prendre les dispositions nécessaires pour que l'avis d'audience soit signifié en personne t à l'intimé ou, si le comité chargé de l'audience adopte une motion à cet effet, par un autre moyen qu'une signification à personne.

ne font pas partie du comité d'audience de la plainte. composé de membres du Conseil de la magistrature qui nouvelle plainte. Le sous-comité des plaintes doit être pour que le dossier soit traité comme s'il s'agit d'une

### POUR LES AUDIENCES CODE DE BROCEDURE

#### **PREAMBULE**

vertu de la disposition 51.1 (1) 6 de la Loi sur les judiciaires et sont élaborées et rendues publiques en en vertu de l'article 51.6 de la Loi sur les tribunaux audiences du Conseil de la magistrature organisées Ces règles de procédure s'appliquent à toutes les

mérites de la cause. donne lieu à une décision juste et basée sur les libéralement afin d'assurer que chaque audience Ces règles de procédure doivent être interprétées

#### DEFINITIONS

judiciaires. qui leur est donnée dans la Loi sur les tribunaux les termes utilisés dans ce code ont la signification 1. A moins que le contexte n'en indique autrement,

(I) Dans ce code,

tribunaux judiciaires.

- gue modifiée. judiciaires, L.R.O. 1990, chap. C. 43, telle (a) La « Loi » est la Loi sur les tribunaux
- 49 (14) de la Loi. l'audience, créé en vertu du paragraphe (b) Le « comité » est le comité chargé de
- vertu de l'alinéa 51.4 (18)(a) de la Loi. il est ordonné de tenir une audience en (c) « Lintimé » est le juge à l'encontre de qui
- des faits à l'encontre d'un intimé. préparation et de la présentation de l'exposé est l'avocat chargé par le Conseil de la (d) « Lavocat chargé de la présentation »

#### PRÉSENTATION DES PLAINTES

engage un avocat-conseil pour la préparation et une plainte portée contre un juge, le Conseil Lorsqu'il ordonne de tenir une audience concernant

> l'audience s'est tenue à huis clos: de révéler publiquement le nom d'un juge même si les critères suivants avant de décider s'il est approprié Les membres du Conseil de la magistrature examinent

a) le juge en fait la demande;

b) il y va de l'intérêt public.

### CONCERNANT UNE PLAINTE - CRITÈRES EN VLLENDVNI NNE DECISION LA PUBLICATION DU NOM D'UN JUGE, ORDONANCE INTERDISANT

la plainte. qui pourraient identifier le juge qui fait l'objet de concernant une plainte, la publication de renseignements ordonnance interdisant, en attendant une décision 51.1(1), le Conseil de la magistrature peut rendre une aux critères établis aux termes du paragraphe Dans des circonstances exceptionnelles et conformément

#### par. 51.6 (10)

en attendant une décision concernant une plainte : pourraient identifier le juge qui fait l'objet de la plainte, interdisant, la publication de renseignements qui de la magistrature peut rendre une ordonnance les critères suivants pour déterminer quand le Conseil Les membres du Conseil de la magistrature examinent

- pourraient être révélées; a) des questions intéressant la sécurité publique
- de la publicité des audiences. ou dans l'intérêt public l'emporte sur le principe révéler dans l'intérêt de la personne concernée aux circonstances, l'avantage qu'il y a à ne pas les révélées à l'audience, qui sont telles qu'eu égard intime ou d'autres questions qui pourraient être b) des questions financières ou personnelles de nature

#### NOUVELLE PLAINTE

comité des plaintes du Conseil de la magistrature résumé des détails de la plainte et l'envoie à un sousfaisant l'objet de l'audience, le registrateur rédige un juge provincial qui n'est pas couverte par la plainte constituer une allégation de mauvaise conduite d'un d'un membre du Conseil de la magistrature, pourrait divulgués qui, s'ils étaient portés à la connaissance Si, au cours de l'audience, de nouveaux faits sont

Si la plainte porte sur une allégation d'inconduite d'ordre sexuel ou de harcèlement sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

#### (9) 3.15 .1sq

## AUDIENCE PUBLIQUE OU À HUIS CLOS – CRITÈRES

Le Conseil de la magistrature a établi les critères suivants aux termes du paragraphe 51.1 (1) pour l'aider à déterminer si les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique. Si le Conseil de la magistrature détermine qu'il existe des circonstances exceptionnelles, conformément aux critères suivants, il peut tenir la totalité ou une partie de l'audience à huis clos.

#### (7) 3.18 .rsq

Les membres du Conseil de la magistrature se fondent sur les critères suivants pour déterminer quelles circonstances exceptionnelles peuvent justifier la décision de préserver le maintien du caractère confidentiel et de tenir la totalité ou une partie de l'audience à huis clos :

- a) des questions intéressant la sécurité publique pourraient être révélées;
- des questions financières ou personnelles de nature intime ou d'autres questions qui pourraient être révélées à l'audience, qui sont telles qu'eu égard aux circonstances, l'avantage qu'il y a à ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences.

## D'AUDIENCE À HUIS CLOS – CRITÈRES DIVULGATION DU NOM DU JUGE EN CAS

Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

par. 51.6 (8)

#### **VIDIENCES**

#### COMMUNICATION PAR LES MEMBRES

Les membres du Conseil de la magistrature qui participent à l'audience ne doivent pas communiquer ni directement ni indirectement avec une partie, un avocat, un mandataire ou une autre personne, pour ce qui est de l'objet de l'audience, sauf si toutes les parties et leurs avocats ou mandataires ont été avisée et ont l'occasion de participer. Cette interdiction n'a pas pour effet d'empêcher le Conseil de la magistrature de ont l'occasion de participer. Cette interdiction n'a pas d'engager un avocat pour se faire aider, auquel cas la nature des conseils donnés par l'avocat est communiquée aux parties pour leur permettre de présenter des observations quant au droit applicable.

#### par. 51.6 (4) et (5)

#### PARTIES À L'AUDIENCE

Le Conseil de la magistrature détermine quelles sont les parties à l'audience.

par. 51.6 (6)

## TOTALITÉ OU PARTIE DE L'AUDIENCE À HUIS CLOS

Les audiences du Conseil de la magistrature sur une plainte et ses réunions portant sur l'examen de la question de l'indemnisation sont ouvertes au public, à moins que le comité d'audience ne détermine, conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1), qu'il existe des circonstances exceptionnelles et que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique, auquel cas il peut tenir la totalité ou une partie de l'audience à huis clos.

#### par. 49 (11) et 51.6 (7)

La Loi sur l'exercice des compétences légales (L.E.C. L.) s'applique à une audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9[1] de la L.E.C.L.).

par. 51.6 (2)

#### COMPOSITION

Les règles suivantes s'appliquent à un comité d'audience établi en vue de la tenue d'une audience aux termes de l'article 51.6 (décision du Conseil de la magistrature) ou de l'article 57.7 (indemnisation) :

- la moitié des membres du comité d'audience, y compris le président, doivent être des juges et la moitié ne doivent pas être des juges;
- 2) un membre, au moins, ne doit être ni juge ni avocat;
- 3) le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel de l'Ontario désigné par le juge en chef, préside le comité d'audience;
- 4) sous réserve des dispositions 1, 2 et 3 ci-dessus, le Conseil de la magistrature peut fixer le nombre des membres du comité d'audience et en déterminer la composition;
- 5) tous les membres du comité d'audience constituent le quorum (par. 49[17]);
- le président du comité d'audience a le droit de voier et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau;
- 7) les membres du sous-comité des plaintes qui a enquêté sur une plainte ne doivent pas participer à une audience sur celle-ci;
- 8) les membres du comité d'examen qui a reçu et examiné la recommandation d'un sous-comité des plaintes à l'égard d'une plainte ne doivent pas participer à une audience sur celle-ci (par. +9[20]).

par. 49 (17), (18), (19) et (20)

#### POUVOIRS

Un comité d'audience formé par le Conseil de la magistrature aux termes des articles 51.6 ou 51.7 a, à cette fin, les mêmes pouvoirs que le Conseil de la magistrature.

par. 49 (16)

(3) l'intérêt public requiert la tenue d'une audience sur la plainte.

#### Avis de décision

#### COMMUNICATION DE LA DECISION

Le Conseil de la magistrature, ou un comité d'examen de celui-ci, communique sa décision au plaignant et au juge qui fait l'objet de la plainte, en exposant brièvement les motifs dans le cas d'un rejet.

par. 51.4 (20)

#### PROCÉDURES ADMINISTRATIVES

On trouvera à la page 25-26 du présent document des renseignements détaillés sur les procédures administratives que doit suivre le Conseil de la magistrature au moment d'aviser les parties de sa décision.

### COMITÉ D'AUDIENCE

#### **LÉGISLATION APPLICABLE**

Toutes les audiences tenues par le Conseil de la magistrature doivent se dérouler conformément à l'article 51.6 de la Loi sur les tribunaux judiciaires.

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

La Loi sur l'exercice des compétences légales (L.E.C.L.) s'applique à toute audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9 [1]de la n'ont pas à être approuvées par le Comité des règles n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

#### par. 51.1 (3) et 51.6 (2)

Les règles que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1) s'appliquent à une audience tenue par celui-ci.

par. 51.6 (3)

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#### C) RENVOI DE LA PLAINTE AU JUGE EN CHEF

un rapport sur la décision concernant la plainte. au comité d'examen et au sous-comité des plaintes chef de la Cour de justice de l'Ontario présente par écrit conformément au paragraphe 51.4 (15). Le juge en plainte pourrait bénéficier et si ce dernier y consent, complémentaire dont le juge qui fait l'objet de la conviennent qu'il existe une démarche ou une formation justice de l'Ontario si la majorité de ses membres le renvoi de la plainte au juge en chef de la Cour de comité d'examen recommande d'assortir de conditions les circonstances ayant donné lieu à la plainte. Le le juge que sa conduite n'a pas été appropriée dans comité d'examen, un moyen convenable d'informer représente, de l'avis de la majorité des membres du que la plainte pourrait être fondée et que la décision justifie pas une autre décision, qu'il y a lieu de croire membres estiment que le comportement reproché ne de la Cour de justice de l'Ontario si la majorité de ses Le comité d'examen renvoie la plainte au juge en chef

#### D) RENVOI DE LA PLAINTE À UN MÉDIATEUR

riovuoq ub inportant du pouvoir inportant du pouvoir dans l'une quelconque des circonstances suivantes: plaintes sont exclues de la procédure de médiation le Conseil de la magistrature établisse ces critères; les de la Loi sur les tribunaux judiciaires. Jusqu'à ce que médiation, comme le prévoit le paragraphe 51.5(3) d'exclusion des plaintes qui ne se prêtent pas à la que la conduite reprochée ne répond pas aux critères majorité des membres du comité d'examen estiment la plainte peut être renvoyée à un médiateur si la la magistrature établit une procédure de médiation, Loi sur les tribunaux judiciaires. Lorsque le Conseil de l'objet de plaintes, conformément à l'article 51.5 de la de médiation pour les plaignants et les juges qui font si le Conseil de la magistrature a établi une procédure Le comité d'examen renvoie la plainte à un médiateur

d'ordre sexuel ou sur une allégation de discrimination (2) la plainte porte sur une allégation d'inconduite que la médiation serait impraticable; et celui du juge relativement à l'objet de la plainte si important entre le compte rendu du plaignant entre le plaignant et le juge, ou il existe un écart

prévu dans une disposition du Code des droits de

ou de harcèlement en raison d'un motif illicite

plainte qui lui a été renvoyée par le sous-comité. rapport du sous-comité des plaintes ou à l'examen d'une d'un comité d'examen de celui-ci, liés à l'examen du pas aux travaux du Conseil de la magistrature, ou La Loi sur l'exercice des compétences légales ne s'applique

#### par. 51.4 (19)

29 et 33 de la Loi sur l'exercice des compétences légales. des compétences légales aux termes des articles 28, être approuvées par le Comité des règles d'exercice Les règles du Conseil de la magistrature n'ont pas à

#### par. 51.1 (3)

de procédure établies à cette fin par le Conseil. de celui-ci, se conforme aux directives et aux règles Conseil de la magistrature, ou un comité d'examen des plaintes, à sa propre demande ou non, et le plaintes qui lui sont renvoyées par un sous-comité paragraphe 51.1(1) relativement à l'examen des et les règles de procédure suivantes aux termes du Le Conseil de la magistrature a établi les directives

par. 51.4 (22)

### A) TENUE D'UNE AUDIENCE DIRECTIVES CONCERNANT LA DÉCISION

(voir la page 18 ci-après). par le Conseil de la magistrature devront être respectés tienne à huis clos et, le cas échéant, les critères établis audience, il peut recommander ou non que celle-ci se Si le comité d'examen recommande de tenir une for, pourrait amener à conclure à l'inconduite judiciaire. des faits et qui, si l'enquêteur la considère digne de une allégation d'inconduite judiciaire qui repose sur us a y li'up imanites estiment de ses membres estiment qu'il y a eu Le comité d'examen ordonne la tenue d'une audience

#### B) REJET DE LA PLAINTE

sur aucun fait réel. que les allégations contre le juge provincial ne s'appuient qu'elle est n'est pas justifiée à moins d'être convaincu comité d'examen ne rejettera pas une plainte sur la base d'avis que la plainte n'est pas justifiée. En général, un un abus de procédure, ou si le comité d'examen est de la magistrature, qu'elle est frivole ou qu'elle constitue judiciaire ne relève pas de la compétence du Conseil ses membres estiment que l'allégation d'inconduite Le comité d'examen rejette la plainte si la majorité de

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## Renvoi d'une plainte à memeral

#### QUAND PROCÉDER AU RENVOI

Lorsque le sous-comité des plaintes présente son rapport au comité d'examen, le comité peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte afin qu'il l'examine lui-même. Le comité d'examen exige que le sous-comité des plaintes lui renvoie la plainte si les membres du sous-comité ne peuvent s'entendre sur la décision à recommander concernant la plainte ou si la décision à recommandée à cet égard est inacceptable pour la majorité des membres du comité d'examen.

par. 51.4 (13), (14) et (17)

#### Y KĘCYKD DO KENAOI BONAOIK DANA COWILĘ DAKYWEM

Si le sous-comité des plaintes renvoie une plainte au comité d'examen ou si le comité exige que le sous-comité lui renvoie une plainte pour qu'il l'examine lui-même, l'identité du plaignant et celle du juge qui fait l'objet de la plainte peuvent être révélées aux membres du comité d'examen qui examinent la plainte, à huis clos, et qui peuvent, selon le cas:

- tenir une audience;
- rejeter la plainte;
- renvoyer la plainte au juge en chet de la Cour de justice de l'Ontario en assortissant ou non le ' renvoi de conditions);
- renvoyer la plainte à un médiateur.

par. 51.4 (16) et (18)

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

## Examen du rapport du sous-comité des plaintes

#### EXYMEN Y HILLS CLOS

Le comité d'examen examine le rapport du souscomité des plaintes, à huis clos, et peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte, auquel cas le comité examine la plainte, à huis clos.

(71) 4.12 .1sq

#### PROCEDURE D'EXAMEN

Le comité d'examen examine la lettre de plainte, les passages pertinents de la transcription (s'il y a lieu), la réponse du juge (s'il y a lieu), etc., dont tous les renseignements identificatoires doivent avoir été supprimés, ainsi que le rapport du sous-comité des plaintes, jusqu'à ce que ses membres soient convaincus que le sous-comité a repéré et examiné les sujets de préoccupation dans son enquête portant sur la plainte et dans la ou les recommandations qu'il a formulées au comité d'examen relativement à la décision concernant la plainte.

Le comité d'examen peut différer sa décision sur la recommandation du sous-comité des plaintes et ajourner ses travaux au besoin afin d'examiner sa décision ou ordonner au sous-comité de poursuivre son enquête et de lui présenter un nouveau rapport.

Si les membres du comité d'examen ne sont pas satisfaits du rapport du sous-comité des plaintes, ils peuvent renvoyer la plainte de nouveau au sous-comité pour que celui-ci poursuive son enquête, donner toute autre orientation ou faire au sous-comité toute autre demande qu'ils jugent appropriée.

Lorsqu'il est nécessaire de procéder à un vote pour déterminer s'il convient d'accepter ou non la recommandation d'un sous-comité des plaintes, et qu'il y a partage des voix, le président vote de nouveau et il a voix prépondérante.

## ANNEXE ABN

GUIDE DE PROCÉDURES DU CMO - COMITÉ D'EXAMEN

#### RÔLE DU COMITÉ D'EXAMEN

Le comité d'examen est formé pour examiner les décisions des sous-comités des plaintes concernant les plaintes et prendre une décision concernant les dossiers de plainte actifs à toutes les réunions ordinaires du Conseil de la magistrature, si les exigences de la loi pertinente relatives au quorum sont respectées.

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

#### par. 51.1 (2)

La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, liées à l'examen tapport d'un sous-comité des plaintes ou à l'examen d'une plainte qui lui est renvoyée par un sous-comité des plaintes.

#### par. 51.4 (19)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

#### (£) 1.12 .1sq

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'examen du rapport présenté par un sous-comité des plaintes à un comité d'examen ou d'une plaintes, et le Conseil de la magistrature, ou un comité des plaintes, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, se conforme aux directives et aux règles de procédure établies à cette fin par le Conseil.

par. 51.4 (22)

#### INFORMATION À INCLURE

Lorsqu'il renvoie la plainte à un comité d'examen du Conseil, le sous-comité des plaintes doit transmettre au comité d'examen tous les documents, transcriptions, déclarations et autres éléments de preuve dont il a tenu compte au cours de l'enquête sur la plainte, y compris, le cas échéant, la réaction à la plainte du juge concerné. Le comité d'examen tient compte de ces renseignements pour parvenir à une conclusion sur la décision appropriée concernant la plainte.

#### COMITÉ D'EXAMEN

#### OBJET

Le Conseil de la magistrature peut former un comité d'examen dans l'un des buts suivants :

- examiner le rapport d'un sous-comité des plaintes;
- examiner une plainte qui lui a été renvoyée par un sous-comité des plaintes;
- examiner le rapport d'un médiateur
- examiner une plainte qui lui est renvoyée à lissue d'une médiation;
- examiner la question de l'indemnisation;

et, à cette fin, le comité d'examen a les mêmes pouvoirs que le Conseil de la magistrature.

par. 49 (I4)

#### COMPOSITION

Le comité d'examen se compose de deux juges provinciaux (autres que le juge en chef), d'un avocat et d'un membre du Conseil de la magistrature qui n'est ni juge ni avocat. Aucun des deux membres ayant siègé au sous-comité des plaintes qui a mené l'enquête sur la plainte et formulé la recommandation au comité d'examen ne peut en faire partie. Un des juges, désigné par le Conseil, préside le comité et quatre membres constituent le quorum. Le président du comité d'examen a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

par. 49 (15), (18) et (19)

la Loi.

## FECOMMANDATION RELATIVE A

Si le sous-comité des plaintes recommande de tenir une audience, il peut recommander ou non que celle-ci se tienne à huis clos et, le cas échéant, on se conforme aux critères établis par le Conseil de la magistrature (voir la page 11 ci-après).

#### E) INDEMNILĘ

Le rapport du sous-comité des plaintes au comité d'examen peut aussi traiter de la question de l'indemnisation du juge pour les frais pour services juridiques qu'il a engagés, le cas échéant, relativement à l'enquête si le sous-comité estime que la plainte doit ce sens dans son rapport au Conseil de la magistrature. Le Conseil peut alors recommander au procureur général que le juge soit indemnisé pour les frais pour services juridiques, conformément à l'article 51.7 de services juridiques, conformément à l'article 51.7 de services juridiques, conformément à l'article 51.7 de services juridiques, conformément à l'article 51.7 de

#### par. 51.7 (1)

La décision de recommander ou non que le juge soit indemnisé pour les frais pour services juridiques sera prise au cas par cas.

#### RENVOI D'UNE PLAINTE AU CONSEIL

magistrature, ou à un comité d'examen de celui-ci. en cause peuvent être révélées au Conseil de la une audience, l'identité du plaignant et celle du juge magistrature, qu'il lui recommande ou non de tenir le sous-comité renvoie la plainte au Conseil de la du sous-comité ne s'entendent pas sur la décision. Si recommandée par le sous-comité ou si les membres qu'il lui renvoie la plainte s'il n'approuve pas la décision de celui-ci, peut exiger du sous-comité des plaintes Conseil de la magistrature, ou un comité d'examen plaintes conviennent de cette recommandation, et le nécessaire que les deux membres du sous-comité des non de tenir une audience sur la plainte. Il n'est pas Conseil de la magistrature, qu'il lui recommande ou' plaintes peut également renvoyer la plainte au Comme il a été signalé ci-dessus, le sous-comité des

(T1) 19 (d1) 4.12.1rq

#### C) REUVOI DE LA PLAINTE À UN MÉDIATEUR

Le sous-comité des plaintes renvoie la plainte à un médiateur si le Conseil de la magistrature a établi une procédure de médiation pour les plaignants et pour les juges qui font l'objet de plaintes, conformément à l'article 51.5 de la Loi sur les tribunaux judiciaires. Lorsque le Conseil de la magistrature établit une procédure de médiation, la plainte peut être renvoyée à un médiateur si les deux membres estiment que la conduite reprochée ne répond pas aux critères d'exclusion des plaintes qui ne se prêtent pas à la médiation, comme le prévoit la Loi sur les tribunaux judiciaires. Jusqu'à ce que le Conseil de la magistrature établisse ces critères, les plaintes sont exclues du établisse ces critères, les plaintes sont exclues du processus de médiation dans les circonstances suivantes:

(1) il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable;

(2) la plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motifillicite prévu dans une disposition du Code des droits de la personne;

(3) l'intérêt public requiert la tenue d'une audience sur la plainte.

par. 51.4 (13) et 51.5

## LEMIK ONE VODIENCE D) KECOMWYNDYLION DE

Le sous-comité des plaintes renvoie la plainte au Conseil de la magistrature, ou à un comité d'examen de celui-ci, et il recommande la tenue d'une audience sur la plainte si elle porte sur une allégation d'inconduite repose sur des faits et qui, si l'enquêteur la considère digne de foi, pourrait amener à conclure qu'il y a eu inconduite judiciaire.

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magistrature.

sans identifier le plaignant ni le juge qui fait l'objet de la plainte. Aucun renseignement qui pourrait identifier le plaignant ou le juge faisant l'objet de la plainte ne doit figurer dans les documents transmis aux membres du comité d'examen.

(91) 4.15 .1sq

#### DÉCISION UNANIME

Le sous-comité des plaintes ne peut rejeter la plainte ou la renvoyer au juge en chef de la Cour de justice de l'Ontario ou à un médiateur que si les deux membres du sous-comité en conviennent, sinon la plainte doit être renvoyée au Conseil de la magistrature.

par. 51.4 (14)

## PAR LE SOUS-COMITÉ DES PLAINTES

#### A) REJET DE LA PLAINTE

Lorsqu'il l'a examinée, le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure. Lorsqu'il a terminé son enquête, le sous-comité peut aussi recommander le rejet d'une plainte s'il en arrive à la conclusion que la plainte n'est pas fondée.

par. 51.4 (3) et (13)

#### B) RENVOI DE LA PLAINTE AU JUGE EN CHEF

Le sous-comité des plaintes renvoie la plainte au juge en chef de la Cour de justice de l'Ontario si les circonstances entourant l'inconduite reprochée ne justifient pas une autre décision, qu'il y a lieu de croire que la plainte pourrait être fondée et que la décision constitue, de l'avis du sous-comité des plaintes, un moyen convenable d'informer le juge que sa conduite n'a pas été appropriée dans les circonstances ayant donné lieu à la plainte. Le sous-comité des plaintes assortira de conditions la décision de renvoyer la plainte au juge en chef de la Cour de justice de l'Ontario si, à son avis, il existe une démarche ou une formation complémentaire dont le juge faisant l'objet de la complémentaire dont le juge faisant l'objet de la plainte pourrait bénéficier et si ce dernier y consent.

par. 51.4 (13) et (15)

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la

par. 51.1 (2)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des arricles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

(£) 1.15 .rsq

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1 (1) relativement à la prise d'une décision concernant une plainte et à la communication au Conseil de la magistrature, ou à un comité d'examen de celui-ci, de la décision du sous-comité des plaintes.

par. 51.4 (21)

#### PROCÉDURE À SUIVRE

Un membre de chaque sous-comité des plaintes est chargé de communiquer avec le registrateur adjoint avant une date précise précédant chaque réunion ordinaire du Conseil de la magistrature pour l'informer, s'il y a lieu, des dossiers attribués au sous-comité sur lesquels ce dernier est prêt à présenter un rapport à un comité d'examen. Le sous-comité des plaintes fournit aussi une copie lisible et remplie en bonne et due forme des pages appropriées de la formule d'admission de la plainte pour chaque dossier sur lequel ils sont prêts à présenter un rapport et indiquent les autres pièces du dossier qui, outre la plainte, doivent être copiées et transmises aux membres du comité d'examen pour qu'il les examine.

Au moins un membre du sous-comité des plaintes est présent lorsque le rapport du sous-comité est présenté au comité d'examen.

#### AUCUN RENSEIGNEMENT IDENTIFICATOIRE

Le sous-comité des plaintes présente au Conseil de la magistrature un rapport sur sa décision concernant toute plainte qui est rejetée ou renvoyée au juge en chef de la Cour de justice de l'Ontario ou à un médiateur,

## RECOMMANDATIONS PROVISOIRES INFORMATION CONCERNANT LES

Lorsque le sous-comité des plaintes recommande la suspension ou la réaffectation temporaire du juge jusqu'au règlement de la plainte, les détails des facteurs sur lesquels repose la recommandation du souscomité doivent être fournis en même temps au juge principal régional et au juge qui fait l'objet de la plainte dans le but d'aider le juge principal régional à prendre sa décision et d'aviser le juge de la plainte dont il fait l'objet et de la recommandation du sous-comité.

Lorsque le sous-comité des plaintes ou le comité d'examen propose de recommander la suspension temporaire ou la réaffectation du juge, il peut donner à celui-ci la possibilité de faire valoir son point de vue par écrit en avisant le juge, par signification à personne ou, si ce n'est pas possible, par courrier recommandé, de la suspension ou de la réaffectation proposée et des motifs justifiant cette proposition, et en l'informant de son droit de réponse. Si aucune en l'informant de son droit de réponse. Si aucune suivant la date de l'envoi de la lettre, la recommandation de suspension temporaire ou de réaffectation dation de suspension temporaire ou de réaffectation

## Rapport au comité d'examen

#### LORSQUE L'ENQUÊTE EST TERMINÉE

Lorsqu'il a terminé son enquête, le sous-comité des plaintes, selon le cas :

· rejette la plainte;

se poursuit.

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audience.

- renvoie la plainte au juge en chef de la Cour de justice de l'Ontario;
- renvoie la plainte à un médiateur, conformêment aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1~(1);
- renvoie la plainte au Conseil de la magistrature, qu'il lui recommande ou non de tenir une

par. 51.4 (13)

# PLAINTE CONTRE LE JUGE EN CHEF PLAINTE CONTRES JUGES – RECOMMANDATIONS PROVISOIRES

#### par. 51.4 (12)

# CRITÈRES POUR LES RECOMMANDATIONS PROVISOIRES DE SUSPENSION OU DE RÉAFFECTATION

Lorsqu'il recommande au juge principal régional compétent de suspendre ou de réaffecter temporairement un juge jusqu'au règlement de la plainte, le sous-comité des plaintes se conforme aux directives et règles de procédure établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1), c'est-à-dire :

#### par. 51.4 (21)

- la plainte découle de relations de travail entre le plaignant et le juge, et le plaignant et le juge travaillent au même palais de justice;
- le fait de permettre au juge de continuer à siéger est susceptible de jeter le discrédit sur l'administration de la justice;
- la plainte est assez grave pour qu'il y ait des motifs raisonnables de faire mener une enquête par un organisme chargé de l'exécution de la loi
- il est évident de l'avis du sous-comité des plaintes que le juge a subi une diminution de ses capacités mentales ou physiques à laquelle il est impossible de remédier ou dont il est impossible de tenir compte raisonnablement.

andience.

GUIDE DE PROCÉDURES DU CMO – SOUS-COMITÉ DES PLAINTES

apport et leurs conseils au cours de l'enquête menée dans le cadre du traitement de la plainte.

par. 51.4 (5)

#### PLAINTES MULTIPLES

Le registrateur remettra toute nouvelle plainte de nature similaire, formée contre un juge à l'égard duquel un ou des dossiers de plainte est (sont) déjà ouvert(s), au même sous-comité des plaintes qui même une enquête sur le ou les dossiers en instance. Une telle mesure garantit que les membres du souscomité des plaintes qui mêment une enquête sur une plainte portée contre un juge soient au courant de l'existence d'une plainte similaire, qu'elle soit du même plaignant ou d'un autre, formulée contre le même juge.

Lorsqu'un juge fait l'objet de trois plaintes portées par trois plaignants différents sur une période de trois ans, le registrateur porte ce fait à l'attention du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, afin qu'il détermine si les plaintes multiples doivent ou non faire l'objet de conseils au juge de la part du Conseil, du juge en chef adjoint ou du juge part du Conseil, du juge en chef adjoint ou du juge principal régional membre du Conseil de la magistrature.

## RECOMMANDATION PROVISOIRE DE RECTATION

Juge en chef. à l'administration ni à la surveillance de la part du la recommandation du sous-comité n'est pas assujetti qu'a le juge principal régional d'accepter ou de rejeter mandation du sous-comité. Le pouvoir discrétionnaire ou réalfecter temporairement le juge selon la recomrégional. Le juge principal régional peut suspendre recommandation est présentée à un autre juge principal membre du Conseil de la magistrature, auquel cas la juge est affecté, sauf si le juge principal régional est principal régional nommé pour la région à laquelle le été prise. La recommandation est présentée au juge qu'une décision définitive concernant la plainte ait l'affectation de celui-ci à un autre endroit, jusqu'à ce rémunération, du juge qui fait l'objet de la plainte ou juge principal régional compétent la suspension, avec Le sous-comité des plaintes peut recommander au

par. 51.4 (8), (9), (10) et (11)

#### RÉPONSE À UNE PLAINTE

droit et elle ne pourra pas être utilisée au cours d'une est réputée avoir été donnée sous réserve de tout fait l'objet de la plainte à cette étape de la procédure Toute réponse à une plainte formulée par le juge qui sous-comité procédera en l'absence de réponse. de la plainte et de tous les détails s'y rapportant, le sous-comité est convaincu que le juge est au courant suivant la date de la lettre recommandée et que le ne reçoit toujours pas de réponse dans les dix jours acheminée au juge par courrier recommandé. Si l'on plaintes en sont informés et une lettre de rappel est du délai prescrit, les membres du sous-comité des plainte. Si aucune réponse n'est reçue avant l'expiration la lettre sollicitant sa réponse pour répondre à la Le juge dispose de trente jours à partir de la date de transmises au juge avec la lettre sollicitant sa réponse. toutes les pièces pertinentes versées au dossier sont copie de la plainte, la transcription (s'il y a lieu) et questions précises soulevées dans la plainte. Une de demander au juge de réagir sur une ou plusieurs réponse du juge, il donne au registrateur l'instruction Si le sous-comité des plaintes souhaite obtenir une

#### **GENERALITÉS**

La transcription de témoignages et la réponse du juge à la plainte sont transmises par messager aux membres du sous-comité des plaintes, à moins que le membres ne donnent des instructions contraires.

Le sous-comité des plaintes peut inviter l'une ou l'autre partie ou l'un ou l'autre témoin, s'il y en a, à le rencontrer ou communiquer avec eux à l'étape de l'enquête. Le secrétaire du Conseil de magistrature transcrit les lettres de plainte qui sont manuscrites et offre aux membres du sous-comité des plaintes les services de secrétariat et de soutien nécessaires.

#### CONSEILS ET ASSISTANCE

Le sous-comité des plaintes peut donner au registrateur l'instruction d'engager des personnes, y compris des avocats, ou de retenir leurs services pour l'aider dans la conduite de son enquête sur une plainte. Le souscomité des plaintes peut aussi consulter les membres du sous-comité des procédures pour obtenir leur

#### PLAINTES ANTERIEURES

Le sous-comité des plaintes limite son enquête à la plainte portée devant lui. La question de l'importance à accorder, s'il y a lieu, aux plaintes antérieures portées contre un juge qui fait l'objet d'une autre plainte devant le Conseil de la magistrature peut être examinée par les membres du sous-comité des plaintes si le registrateut, avec l'aide d'un avocat (si le registrateut l'estime nécessaire), détermine d'abord que la ou les plaintes antérieures sont très semblables en ce sens plaintes antérieures sont très semblables en ce sens qu'il y a preuve de faits similaires et qu'elles l'aideraient à déterminer si la plainte examinée pourrait ou non être fondée.

## INFORMATION QUE LE REGISTRATEUR DOIT OBTENIR

Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur ont été attribués, d'en discuter et de déterminer dans un délai d'un mois après la réception d'un dossier si une transcription de témoignages ou une réponse à la plainte est nécessaire. Si le sous-comité des plaintes lui en fait la demande, le registrateur doit obtenir pour celui-ci toutes les pièces (transcriptions, bandes audio, dossiers du tribunal, etc.) que le sous-comité souhaite examiner en rapport avec une plainte; les membres du sous-comité avec une plainte; les membres du sous-comité n'obtiennent pas eux-mêmes ces pièces.

#### TRANSCRIPTIONS, ETC.

Compte tenu de la nature de la plainte, le souscomité peut donner au registrateur l'instruction de
demander la transcription de témoignages ou leur
enregistrement sur bande magnétique dans le cadre
de son enquête. Au besoin, on communique avec le
plaignant pour déterminer l'étape à laquelle en est la
coription. Le sous-comité des plaintes peut donner au
registrateur l'instruction de laisser le dossier en suspens
registrateur l'instruction de laisser le dossier en suspens
jusqu'à ce que l'affaire portée devant les tribunaux ait
jes sténographes judiciaires ont comme consigne de
les sténographes judiciaires ont comme consigne de
ne présenter la transcription au juge qui fait l'objet
de la plainte pour révision.

décision de renvoyer la plainte au juge en chef, le sous-comité des plaintes se conforme aux directives et aux règles de procédure établies par le Conseil de la magistrature aux termes du paragraphe 51.5 (1). Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'enquête menée sur une plainte par un sous-comité des plaintes.

#### par. 51.4 (21)

#### ACCORD SUR LA FAÇON DE PROCÉDER

Les membres du sous-comité des plaintes examinent le dossier et les pièces (le cas échéant) et en discutent ensemble avant de déterminer la teneur de la plainte (demander une transcription, solliciter une réponse, etc.). Aucun membre du sous-comité ne doit prendre quelque mesure d'enquête que ce soit à l'égard d'une plainte lui ayant été attribuée sans d'abord examiner la plainte avec l'autre membre du sous-comité des plaintes et convenir de la démarche à adopter. Si les membres du sous-comité des plaintes et convenir de la démarche à adopter. Si les plaintes et convenir de la démarche à adopter. Si les plaintes du sous-comité des plaintes et convenir de la démarche à adopter. Si les membres du sous-comité des plaintes ne s'entendent pas sur une mesure d'enquête, ils soumettent la question à un comité d'examen pour obtenir ses conseils et son opinion.

### REJET D'UNE PLAINTE

Le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure.

par. 51.4 (3)

#### TENUE D'UNE ENQUÊTE

Si la plainte n'est pas rejetée, le sous-comité des plaintes mène les enquêtes qu'il estime appropriées. Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider dans la conduite de son enquête. L'enquête est menée à huis clos. La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité des plaintes liées à l'enquête sur une plainte.

par. 51.4 (4), (5), (6) et (7)

## ANNERE -B.

## GUIDE DE PROCÉDURES DU CMO

Veuillez noter: A moins d'indication contraire, tous les renvois figurant dans le présent document se rapportent à la Loi sur les tribunaux judiciaires, L.R.O. 1990, dans sa forme modifiée.

#### PROCEDURES ADMINISTRATIVES

On trouvera aux pages 25 à 27 du présent document des renseignements détaillés sur les procédures administratives que doivent suivre les membres du sous-comité des plaintes et ceux du comité d'examen.

#### RAPPORTS D'AVANCEMENT

Les membres du sous-comité des plaintes reçoivent régulièrement par écrit un rapport faisant le point sur la situation des dossiers actifs qui leur ont été attribués. Ces chaque membre du sous-comité au début de chaque mois. Les membres s'efforcent d'examiner chaque mois, aut réception du rapport d'avancement, les dossiers qui leur ont été attribués et de prendre les mesures nécessaires pour soumettre ces dossiers à l'examen nécessaires pour soumettre ces dossiers à l'examen du Conseil de la magistrature dès que possible.

### Enquête

## LIGNES DIRECTRICES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

#### par. 51.1 (2)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

#### par. 51.1 (3)

Lorsqu'il mène des enquêtes, recommande provisoirement la suspension ou l'affectation à un autre endroit, prend une décision concernant une plainte à l'issue de son enquête ou assortit de conditions la

#### **PLAINTES**

#### **GENERALITÉS**

loute personne peut porter devant le Conseil de la magistrature une plainte selon laquelle il y aurait eu inconduite de la part d'un juge provincial. Si une allégation d'inconduite est présentée à un membre du Conseil de la magistrature, elle est traitée comme une plainte portée devant celui-ci. Si une allégation d'inconduite contre un juge provincial est présentée à un autre juge ou au procureur général, cet autre juge ou le procureur général, selon le cas, fournit à l'auteur de l'allégation des renseignements sur le rôle l'auteur de l'allégation des renseignements sur le rôle du Conseil de la magistrature et sur la façon de porter plainte, et le renvoie au Conseil de la magistrature.

#### par. 51.3 (1), (2) et (3)

Une fois qu'une plainte a été portée devant lui, le Conseil de la magistrature est chargé de la conduite de l'affaire

#### par. 51.3 (4)

### SOUS-COMITÉ DES PLAINTES

#### COMPOSITION

La plainte reçue par le Conseil de la magistrature est examinée par un sous-comité des plaintes du Conseil, qui se compose d'un juge autre que le juge en chef et d'un membre du Conseil qui n'est ni juge ni avocat (si la plainte est portée contre un protonotaire, les procédures s'appliquent à lui de la même manière qu'à un juge). Les membres admissibles du Conseil de la magistrature siègent au sous-comité des plaintes par rotation.

#### par. 51.4 (1) et (2)

# COIDE DE BEOCEDOBES DO CMO - INDEX

P-77	Clôture de dossier
ion aux parties	Arifingis – noisios b b sivA
B-26 et B-27	Drot-stendu
B-79	Comité d'examen
97-8 19 25-8	sənnise des plaintes
72-4 brainte du dossier de plainte	Dépôt d'une plainte \ Ouver
VES	QUESTIONS ADMINISTRATI
F2-24	
Cour des petites créances	
ef ou certains autres jugesB-23 et B-24	
10nes B-22 et B-23	fqooneri esguj no einengielq
SE	CONSIDÉRATIONS SPÉCIALI
P-77	sonsandoroll sb siqoD
ntenu l'ordonnanceB-22	Réunion pour décider du co
8-22	Délai de réponse
22-8áilisulírié	Observations quant à un pré
B-77	Motification du ministre
L2-8 19 [2-8ht qu'invalidité	Critère de qualification en la
le et rapport	Examen initial de la demand

INDEX VANEXE B Rapport du sous-comité des besoins spéciaux ......B-21

### CONFIDENTIALITÉ ET PROTECTION DE LA VIE PRIVÉE

CUIDE DE PROCÉDURES DU CMO – INDEX

THE TAXABLE

I2-8	Sous-comité des desoins spéciaux	
12-8B	Présentation de la requête par écrit	
T7-8	Directives et règles de procédure	
B-71	Ordonnance de prise en compte rendue à l'issue d'une audience.	
B-70	Dossiers confidentiels	
B-70	Aide d'experts	
B-70	Droit de vote du président	
B-70	Présidence des réunions anoinnés	
B-70	La Couronne est liée	
B-70	Participation	
B-70	Directives et règles de procédure	
B-70	Préjudice injusuliné	
.19 et B-20	Obligation du Conseil de la magistratureB.	
6I-8	Requête d'ordonnance	
	E EN COMPTE DES INVALDITÉS	PRIS
B-13	l'information et la protection de la vie privée	
	Modifications apportées à la Loi sur l'accès à	
6I-9	Exception	
6I-9	Ordonnance de non-divulgation	
6I-8B	Interdiction d'identifier le juge	
-18 et B-19	Rapport au procureur général B-	
B1-8	Critères établis	
B-18	Ordonnance interdisant la publication	
B-18	Interdiction de divulguer le nom du juge	
B-18	Possibilité de tenir l'audience à huis clos	
81-8B	Révélation de l'identité du juge au comité d'examen	
BI-8	Travaux à huis clos du comité d'examen	
81-8	Enquête à huis clos par un sous-comité des plaintes	
-17 et B-18	Politique du Conseil de la magistratureB	
71-8	Renseignements au public	

### **VPRÈS LAUDIENCE**

Paudibup'l	эр	oussi'l	ņ	noisissb	əun <sub>i</sub> p	osing
------------	----	---------	---	----------	--------------------	-------

B-17	mon ub noitealiwid
audience	Rejet de la plainte à l'issue d'une
B-17	Recommandation
	Examen public ou à huis clos
Al-A	
	INDEWNILĘ
71-8 15 51-8	Application
9I-8	Décret de destitution
8-16	
B-16	
	Destitution des fonctions
	anoitanol sob noitutitae
91-8	Ordonnance
ogul nu'b eniosod eob otymoo	Unot tios li'up ruog oonnanobrO
B-16	Interdiction d'identifier le juge
SI-8	
SI-8	
Sta	
	Rapport au procureur général
B-12	Combinaison de sanctions
\$[-8	Décision
2 t Ct	

GUIDE DE PROCÉDURES DU CMO - INDEX

- 0.35 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10 - 1.10

Montant et versement de l'indemnité......B-17

Décisions préalables à l'audience

noisisba be sivh

## Faudience B-14 Conférence préparatorie ......B-14 EI-A....noilsaluvid Présentation des plaintes Définitions. Preamble B-12 CODE DE PROCÉDURE POUR LES AUDIENCES une plainte – Critères d'un juge, en attendant une décision concernant Ordonnance interdisant, la publication du nom d'audience à huis clos – Critères Divulgation du nom du juge en cas Audience publique ou à huis clos – Critères Totalité ou partie de l'audience à huis clos Parties à l'audience Communication par les membres **VODIENCES** Pouvoirs 2107109 COMITE D'AUDIENCE Procédures administratives Communication de la décision

GUIDE DE PROCÉDURES DU CMO - INDEX

THE TRANSP

### c) renvoi de la plainte au juge en chef................B-9 b) rejet de la plainte a) tenue d'une audience Directives concernant la décision Directives et règles de procédure Pouvoir d'un comité d'examen à l'égard du renvoir n'b riovuo¶ Quand procéder au renvoi Renvoi d'une plainte à un comité d'examen Procédure d'examen B-8 Examen à huis clos Examen du rapport du sous-comité des plaintes Directives et règles de procédure ......Brirectives et règles de procédure Rôle du comité d'examen ......B-7 COMILE D'EXAMEN Information à inclure e) recommandation de verser une indemnité Recommandation relative à la tenue d'une audience............B-6 Definite au juge en chef Critères pour les décisions rendues par un sous-comité des plaintes – Décision unanime. Aucun renseignement identificatoire......B-5 Z-8..... a suivre Z-8....nəmexs'b sirincə au comité d'examen Directives et règles de procédure relatives

H X H N N Y

Rapport au comité d'examen

## INDEX VANAEXE B

## INDEX

GUIDE DE PROCÉDURES DU CMO

Information concernant les recommandations provisoires
de suspension ou de réaffectation
Critères pour les recommandations provisoires
Recommandations provisoires
Plainte contre le juge en chef et certains autres juges –
Recommandation provisoire de suspension ou de réaffectation
Plaintes multiples
Conseils et assistance
GénéralitésB-3
Réponse à une plainte
Transcriptions, etc.
Information que le registrateur doit obtenir.
Plaintes antérieures.
Tenue d'une enquête
Rejet d'une plainte
Accord sur la façon de procéder  Beiet d'une plainte
aux enquêtes sur une plainte
Lignes directrices et règles de procédure relatives
sevitoler erubèsora ab selnér ta sesintserih seavi l
Enquête
Rapports d'étape
Procédures administratives
Composition B-1
SOUS-COMITÉS DES PLAINTES
I-8
PLAINTE

GUIDE DE PROCÉDURES DU CMO

VANAEXE «B»



VANEXENAN

Dans tous les cas, la décision du Conseil une lettre vous informant des raisons du rejet. juge, votre plainte sera rejetée et vous recevrez décide qu'il n'y a pas eu d'inconduite par le Si, après un examen sérieux, le Conseil

Renseignements supplémentaires

vous sera communiquée.

Irais le 1-800-695-1118. de teleimprimeur peuvent composer sans sans frais le 1-800-806-5186. Les utilisateurs politaine de Toronto, vous pouvez téléphoner de Toronto. À l'extérieur de la région métrole (416) 327-5672 dans la région métropolitaine d'assistance supplémentaires, veuillez composer Si vous avez desoin de renseignements ou

Les plaintes par écrit doivent être envoyées par

la poste ou par télécopieur à l'adresse suivante:

Rappel...

Succursale Adelaide

C.P. 914

Conseil de la magistrature de l'Ontario

Toronto (Ontario) M5C 2K3 31, rue Adelaide est

Télécopieur (416) 327-2339

options en matière d'appel. votre avocat pour déterminer quelles sont vos décision d'un juge en cour, veuillez consulter protonotaires. Si vous n'êtes pas satisfait de la sur la conduite de juges provinciaux ou de enquête seulement sur les plaintes portant

Le Conseil de la magistrature de l'Ontario

à Ottawa. être faite au Conseil canadien de la magistrature juge nommé par le gouvernement fédéral doit Toute plainte portant sur la conduite d'un

ciplinaires seraient appropriées. Conseil pourra déterminer quelles sanctions disune audience publique pourrait être tenue et le décide qu'un juge est l'auteur d'une inconduite,

Si le Conseil de la magistrature de l'Ontario la recommandation de sa destitution. allant d'un avertissement donné au juge jusqu'à

sérieuses. Elle peut entraîner des sanctions

votre plainte avant de rendre sa décision.

membre du public, révisera soigneusement

comprend deux juges, un avocat et un autre nombre de membres. Ce comité d'examen, qui comité d'examen composé d'un plus grand

votre plainte et fera une recommandation à un membre du public, mènera une enquête sur

Un sous-comité, composé d'un juge et d'un

répondra par écrit pour en accuser réception.

l'Ontario reçoit votre lettre de plainte, il vous

Lorsque le Conseil de la magistrature de

à croire qu'il y a eu inconduite de la part

salle d'audience, veuillez fournir tous les

renseignements pertinents qui vous portent

incident qui s'est produit à l'extérieur de la

eu inconduite. Si votre plainte porte sur un

possibles qui vous portent à croire qu'il y a

et le lieu de l'audience et autant de détails que

signée. La plainte doit inclure la date, l'heure

vous devez formuler votre plainte par lettre

d'appel peut modifier la décision d'un juge.

dans la décision d'un juge ni de modifier sa

décision dans un dossier. Seule une cour

Dépôt d'une plainte

contre un juge provincial ou un protonotaire, Si vous avez une plainte d'inconduite à présenter

Comment les plaintes sont elles instruites?

Décision du Conseil

Linconduite judiciaire est une affaire des plus

VNNEXE

# 

# LE CONSEIL DE LA MAGISTRATURE DE L'ONTARIO AVEZ-VOUS UNE PLAINTE?

L'information contenue dans cette brochure porte sur les plaintes d'inconduite formées contre les juges provinciaux ou les protonotaires.

décevoir l'une ou l'autre des parties. Si l'une des parties au litige pense qu'un juge a rendu la mauvaise décision, elle peut demander une révision de la décision ou interjeter appel de la décision du juge devant une cour supérieure. Cette cour supérieure est mieux connue sous le nom de cour d'appel. Si la cour d'appel convient qu'une erreur a été commise, la décision initiale peut être modifiée ou un nouveau procès peut être ordonné.

# Conduite professionnelle des juges

En Ontario, nous nous attendons à des normes élevées dans la façon dont justice est rendue et dans la **conduite** des juges qui ont la responsabilité de rendre les décisions. Si vous voulez vous plaindre de l'inconduite d'un juge provincial ou protonotaire, vous pouvez déposer une plainte officielle auprès du Conseil de la magistrature de l'Ontario.

Heureusement, l'inconduite d'un juge est un événement rare. Des exemples d'inconduite d'un juge peuvent inclure un parti pris contre une personne en raison de sa race ou de son sexe, un conflit d'intérêt avec l'une des parties ou le manquement au devoir.

# Rôle du Conseil de la magistrature de l'Ontario

Le Conseil de la magistrature de l'Ontario est un organisme qui a été établi par la province de l'Ontario en vertu de la Loi sur les tribunaux judiciaires. Le Conseil de la magistrature remplit plusieurs fonctions mais son rôle principal est d'enquêter sur les plaintes d'inconduite formées contre des juges provinciaux. Le Conseil est composé de juges, d'avocats et de membres du public. Le Conseil n'a pas le pouvoir d'intervenir

Les juges provinciaux en Ontario – Qui sont-ils?

En Ontario, la plupart des causes en droit pénal
et en droit de la famille sont entendues par l'un
des nombreux juges nommés par le gouvernement provincial pour assurer que justice soit
rendue. Les juges provinciaux, qui entendent
des milliers de causes par année, ont exercé le
droit pendant au moins dix ans avant d'être

### Le système de justice de l'Ontario:

nommés à la magistrature.

En Ontario, comme dans le reste du Canada, le système de justice est fondé sur la procédure contradictoire. Autrement dit, lorsqu'il y a un différend, les deux parties ont la possibilité de preuve à un juge dans une salle d'audience. Nos juges ont le devoir difficile mais essentiel de décider de l'issue d'une cause en se fondant sur les témoignages qu'ils entendent en cout et leur connaissance du droit.

type de système de justice, les juges doivent être libres de prendre leurs décisions pour les bonnes raisons, sans se soucier des conséquences de mécontenter l'une des parties, que ce soit le gouvernement, une société, un(e) citoyen(ne) ou un groupe de citoyens.

# La décision d'un juge est-elle sinale?

La décision du juge peut entraîner de nombreuses conséquences graves. Celles-ci peuvent aller d'une amende à la probation ou une peine de prison ou, dans les causes en droit de la famille, au placement des enfants avec l'un ou l'autre des parents. Souvent, la décision risque fort de des parents.

# LE CONSEIL DE LA MAGISTRATURE

**VUNEXE** «**A**»

DE L'ONTARIO – AVEZ-VOUS UNE PLAINTE?



# DE L'ONTARIO CONSEIL DE LA MAGISTRATURE

RAPPORT ANNUEL 2001 - 2002

# **VANNEXES**

ANNEXE «B» Guide de procédures du CMO

ANNEXE «C» Plan de formation continue

ANNEXE «E» Motifs de la décision

ANNEXE «D» Lois pertinentes

YNNEXE «Y» Brochure

### **VIDIENCES**

lui, le comité d'audience a estimé que le comportement du juge était « incorrect » et qu'« en d'autres circonstances, il aurait pu représenter une inconduite ». Le comité d'audience a également noté que la conduite du juge avait « embarrassé la magistrature et causé au juge un certain degré d'humiliation publique ». Cependant, le comité d'audience a déclaré que « dans les circonstances particulières de l'espèce, [...] nous ne trouvons pas d'inconduite judiciaire au sens de cette expression dans le contexte de la Loi sur les donc rejeté la plainte.

qu'il le lui ait demandé. Le sous-comité des plaintes a également retenu les services d'un enquêteur privé pour interroger les témoins et procéder à un examen judiciaire des disques durs de l'ordinateur et d'autres équipements auxquels le juge avait accès. Le sous-comité des plaintes a men qui, après examen du matériel recueilli par amen qui, après examen du matériel recueilli par le sous-comité des plaintes, a décidé que l'affaire devrait faire l'objet d'une audience et qu'un avis d'audience devrait être préparé.

Conformément à l'alinéa 51.4(18) et au paragraphe 51.6 de la Loi sur les tribunaux judiciaires, un avis d'audience a été signifié et une audience a eu lieu le 20 avril 2001. Le comité d'audience était constitué comme suit :

Juge en chef de l'Ontario R. ROY MCMURTRY PAUL HAMMOND

ayant considéré tout le matériel déposé devant tants du CMO et du juge visé par la plainte et Ayant entendu les présentations des représenjuge ne serait pas divulgué ni rendu public. l'audience aurait lieu à huis clos et que le nom du Loi, une ordonnance serait rendue portant que magistrature de l'Ontario en application de cette ciaires et aux critères établis par le Conseil de la que, conformément à la Loi sur les tribunaux judidentifier le juge. Le comité d'audience a décidé tout renseignement qui pourrait permettre d'iclos et qu'il y ait une défense de publication de d'audience portant que l'audience ait lieu à huis qu'une ordonnance soit rendue par le comité 51.6(7) de la Loi sur les tribunaux judiciaires, demande par écrit, conformément à l'alinéa Au début de l'audience, le juge a déposé une

## **VODIENCES**

## 11. Audiences

### DOSSIER NO 04-017/98

tout le matériel et les différentes lettres qui avaient été envoyées au juge et reçues de lui depuis la décision initiale de renvoyer l'affaire devrait faire l'objet d'une audience car il était évident que le juge ne reconnaissait pas qu'il y ait eu quoi que ce soit d'incorrect dans son compit eu quoi que ce soit d'incorrect dans son comparis d'audience a été signifié et une audience a avis d'audience a été signifié et une audience a critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critères requérant le « huis clos », l'audience de critère de l'audience d

À la fin de l'audience, le comité d'audience a jugé que le comportement du juge, bien qu'il témoigne d'une erreur de jugement, ne constituait pas pour autant une inconduite judiciaire pour un certain nombre de raisons qu'il a énumérées. Le comité d'audience a donc rejeté la plainte.

On trouvera en annexe E un exemplaire du texte complet des « Motifs de la décision » sur cette affaire.

### DOSSIER NO 05-030/99

Le Conseil de la magistrature a reçu une lettre d'un juge principal régional qui s'estimait « dans l'obligation de saisir le Conseil de la magistrature de l'Ontario d'une plainte ». La lettre alléguait qu'un juge s'était « servi de son ordinateur pour visiter des sites pornographiques sur Internet », avait « utilisé les bureaux et les ordinateurs avait « utilisé les bureaux et les ordinateurs d'autres juges... pour visiter des sites pornographiques sur Internet », et avait « laissé des images visibles sur son ordinateur auxquelles un membre du personnel de leur tribunal avait eté exposé ». Le sous-comité des plaintes a examiné été exposé ». Le sous-comité des plaintes a examiné eté expose ». Le sous-comité des plaintes a examiné une réponse à la plainte envoyée par le juge sans une réponse à la plainte envoyée par le juge sans

plaintes et du comité d'examen, ayant examiné demande et les membres du sous-comité des chef. Le juge n'a jamais répondu à cette plainte puisse être renvoyée devant le juge en ment n'avait pas été approprié pour que la que la plainte était fondée et que son comporteplusieurs reprises demandant qu'il reconnaisse Conseil de la magistrature a écrit au juge à comme requis par les procédures du CMO. Le duite n'avait pas été appropriée en l'espèce, naisse que la plainte était fondée et que sa conjuge en chef, à condition que le juge visé reconserait plus approprié de renvoyer la plainte au tion qu'une audience ait lieu et décidé qu'il du comité d'examen ont rejeté la recommandaaudience. Après examen du matériel, les membres magistrature en recommandant qu'il tienne plaintes a renvoyé la plainte au Conseil de la a examiné sa réponse. Le sous-comité des tion des preuves, a soumis la plainte au juge et ordonné et examiné une copie de la transcrippassés avec lui. Le sous-comité des plaintes a l'avocat du plaignant à cause de ses rapports déclaré qu'il ne voulait rien avoir à faire avec plaignant alléguait par ailleurs que le juge avait rôle pour fixer une nouvelle date de procès. Le pour la troisième fois à l'audience de mise au témoignages, et qu'il avait renvoyé la cause qu'il n'avait pas le temps d'entendre les de première instance avait déclaré et sans aucune espèce d'avertissement, le juge eût commencé en présence de tous les témoins Le plaignant alléguait que, après que le procès tion de menace de causer des lésions corporelles. une personne accusée de deux chefs d'accusa-Le plaignant était un avocat qui représentait

motions ni que le juge ait été au courant qu'il y avait eu de faux témoignages. Le sous-comité des plaintes a rapporté par ailleurs qu'étant donné les autres allégations contre les parties adverses et satisfait de la décision rendue en réponse à la motion, mais qu'il n'y avait pas eu inconduite de la part du juge. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

des plaintes que la plainte soit rejetée. souscrit à la recommandation du sous-comité soumis au tribunal. Le comité d'examen a dans l'affidavit de la plaignante qui avait été tique justifiée de la nature des preuves présentées motion concernant la plaignante était une critoute déclaration du juge chargé d'entendre la plaintes a rapporté par ailleurs qu'à son avis, de compétence du CMO. Le sous-comité des preuve d'inconduite judiciaire, hors du champ peuvent faire l'objet d'un appel et sont, sans l'Ontario n'a rien trouvé à cet égard, ces erreurs de droit, et le Conseil de la magistrature de sa compétence. Si le juge a commis des erreurs que les décisions qu'il avait rendues relevaient de le juge avait exercé son pouvoir discrétionnaire et preuve d'inconduite judiciaire dans la façon dont rejetée parce qu'il estimait qu'il n'y avait pas de des plaintes a recommandé que la plainte soit des preuves à l'appui de la motion. Le sous-comité

#### DOSSIER NO 07-033/01

les décisions qu'il avait rendues en réponse aux luge se soit fondé sur de faux témoignages dans car il estimait qu'il n'y avait pas de preuve que le plaintes a recommandé que la plainte soit rejetée tourni par le plaignant. Le sous-comité des examiné le dossier du tribunal qui lui avait été n'avait rien fait. Le sous-comité des plaintes a li'up 19 « səgangioməi xun » əb isəsigas's li'up dans un affidavit et, de plus, que le juge savait sa décision sur de « faux témoignages » contenus motion dans le cadre de cette affaire avait fondé ant alléguait que le juge qui avait entendu une sous-comité des plaintes a rapporté que le plaigconflit parallèle en matière de garde et d'accès. Le en cause la Société de l'aide à l'enfance et à un Le plaignant était partie à une instance mettant

### DOSSIER NO 07-031/01

que la plainte soit rejetée. recommandation du sous-comité des plaintes résultat. Le comité d'examen a souscrit à la blait insatisfait du processus tout entier et de son d'inconduite judiciaire et que le plaignant semrejetée car elle ne contenait pas d'allégation précise des plaintes a recommandé que la plainte soit jamais dit exactement pourquoi. Le sous-comité Société d'aide à l'enfance et qu'on ne lui avait enlevés » plusieurs années auparavant par la insatisfait de ce que ses enfants lui avaient été « indiquée, à part le fait que le plaignant se disait précise de sa plainte contre le juge n'était pas parallèle en matière de garde et d'accès. La nature en cause la Société d'aide à l'enfance et à un conflit Le plaignant était partie à une instance mettant

### DOSSIER NO 07-032/01

ordonné et examiné une copie de la transcription partie adverse ». Le sous-comité des plaintes a entièrement fausses présentées par l'avocat de la fondées sur des « allégations sans fondement et prononcé des accusations contre sa personne méprisants et diffamatoires » à son sujet et avait alléguait que le juge avait sait « des commentaires de l'audition de la motion. La plaignante motifs de la décision qu'il avait rendue à l'issue présumées qu'il avait faites la concernant dans les préjugés à son endroit dans les déclarations la motion de la grand-mère avait fait preuve de plaignante alléguait que le juge chargé d'entendre enfant qui faisait aussi une demande de garde. La motion par la grand-mère paternelle de son suite à une requête de soutien présentée par la famille. Elle comparaissait à titre d'intimée questions de garde et d'accès devant la Cour de La plaignante était partie à un conflit sur des

l'Ontario n'a rien trouvé à cet égard, ces erreurs peuvent faire l'objet d'un appel et sont, sans preuve d'inconduite judiciaire, hors du champ de compétence du CMO. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### DOSSIER NO 07-029/01

des plaintes que la plainte soit rejetée. souscrit à la recommandation du sous-comité de compétence du CMO. Le comité d'examen a preuve d'inconduite judiciaire, hors du champ peuvent faire l'objet d'un appel et sont, sans l'Ontario n'a rien trouvé à cet égard, ces erreurs l'instance, et le Conseil de la magistrature de a commis des erreurs de droit au cours de rendues relevaient de sa compétence. Si la juge faisait objection et que les décisions qu'elle avait admettre les preuves auxquelles le plaignant avait usé de son pouvoir discrétionnaire pour d'inconduite judiciaire dans le fait que la juge rejetée car il estimait qu'il n'y avait pas de preuve le plaignant et recommandé que la plainte soit examiné la transcription qui avait été fournie par vertu de la Charte. Le sous-comité des plaintes a avaient été obtenues en violation de ses droits en preuves à l'instance qui, de l'avis du plaignant, « de toutes ses forces », et avait admis des l'instance avait crié: « Non coupable », et cela fois son plaidoyer inscrit, la juge qui présidait lésions corporelles. Le plaignant alléguait qu'une d'une accusation de menaces de causer des criminelle et avait comparu en cour pour répondre Le plaignant avait fait l'objet d'une accusation

de la PPO, qui l'avait conduit au tribunal fait également partie des membres du groupe qui se retrouvaient pour boire avec le frère de la victime. Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce qu'il n'avait pas reçu de preuve à l'appui de la spéculation du plaignant que le juge qui présidait le procès avait dû recevoir un pot-de-vin. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

#### DOSSIER NO 07-022/01

l'instance, et le Conseil de la magistrature de juge a commis des erreurs de droit au cours de avait rendues relevaient de sa compétence. Si le ment du juge et que les décisions que le juge preuve d'inconduite judiciaire dans le comportesoit rejetée car il estimait qu'il n'y avait pas de plaintes a recommandé par ailleurs que la plainte l'alléguait le plaignant. Le sous-comité des preuve de préjugé ni d'abus de pouvoir comme ont rapporté qu'à leur avis, il n'y avait pas de rejetée. Les membres du sous-comité des plaintes dossier, ont recommandé que la plainte soit plaignant étaient fondées et, après examen du du tribunal pour déterminer si les allégations du sous-comité des plaintes ont examiné le dossier préjugé en faveur de l'intimé. Les membres du sions et actions, avait indiqué clairement son l'intimé de comparaître en cour et, par ses déciintimés et refusé d'empêcher le représentant de refusé de rejeter une requête présentée par les d'outrage au tribunal contre l'intimé en l'espèce, ordonnance, refusé de rendre une ordonnance d'une poursuite civile avait « modifié » son avait comparu précédemment dans le cadre Le plaignant alléguait que le juge devant lequel il

demandé quels souvenirs elle avait de la conférence préparatoire au procès. Après avoir examiné la réponse de l'avocate à sa lettre, le sous-comité des plaintes a recommandé au comité d'examen que la plainte soit rejetée, car la tierce partie noire au procès confirmait que le juge n'avait eté plaignante de parler. L'avocate confirmait le souvenir qu'avait le juge de l'audience et indiquait que la plaignante s'etait montrée grossière et agressive à l'égard du juge. Le comité d'examen a souscrit à la recommandation du sous comité des souscrates que la plainte soit rejetée.

#### **DOSSIEK NO 07-020/01**

répétant son allégation et en ajoutant que l'agent début de l'instance. Le plaignant a répondu en par une porte arrière du palais de justice avant le allégation qu'il avait vu le frère de la victime sortir que cet incident avait eu lieu autre que son écrit au plaignant pour lui demander des preuves début de l'instance. Le sous-comité des plaintes a une porte arrière du palais de justice avant le de la victime que le plaignant avait vu sortir par avait dû recevoir un pot-de-vin de la part du frère des voies de fait, le juge qui l'avait condamné puisqu'il avait été par la suite reconnu coupable 9 h 30 du matin. Le plaignant alléguait que, habituellement portés dans une petite ville » vers « dans des vêtements qu'il n'aurait pas sortir « en douce » de l'arrière du palais de justice frère de l'homme qu'il était accusé d'avoir agressé à une accusation de voies de fait, il avait vu le de justice où il devait comparaître pour répondre dans une voiture de police à l'extérieur du palais Le plaignant indiquait qu'alors qu'il était assis

et, à l'issue de l'examen du matériel supplémentaire, le sous-comité des plaintes a de nouveau recommandé que la plainte soit rejetée. Le comité d'examen a souscrit à la recommandation du souscomité des plaintes que la plainte soit rejetée.

La plaignante avait comparu à la Cour des petites

# DOSSIER NO 07-019/01

plaignante et de la réponse du juge, et lui a joignant à sa lettre une copie de la lettre de la sous-comité des plaintes a écrit à l'avocate, l'audience préparatoire au nom de l'intimé. Le plaintes s'adresse à l'avocate qui avait assisté à sab àtimos-suos al aup înamalegă des et niait l'inconduite dont elle l'accusait. Le juge avec elle, il était resté « juste en tout temps » procès. Il ajoutait que, bien qu'il ait été serme essayé de monopoliser l'audience préparatoire au quait qu'elle l'avait souvent interrompu et avait avait manqué de respect envers la cour ». Il indiplaignante était « grossière, exigeante et qu'elle et a répondu au sous-comité des plaintes que la allégations présentées dans la lettre du plaignant, juge et a examiné sa réponse. Le juge a nié les sous-comité des plaintes a soumis la plainte au pour les audiences préparatoires au procès, le dehors ». Comme il n'y avait pas de transcription « menacé d'appeler la police pour [la] mettre juge ne l'avait pas autorisée à parler et qu'il avait et menaçant ». Elle alléguait également que le hurlé, qu'il [s'était] montré sarcastique, grossier professionnelle, qu'il [avait] levé la voix, crié, procès avait « agi d'une façon totalement non le juge qui présidait l'audience préparatoire au assistante juridique ». La plaignante alléguait que prévenu que l'intimé était représenté par une « procès. Elle s'était représentée elle-même et avait créances pour une audience préparatoire au

dont il avait exercé son pouvoir discrétionnaire et que les décisions qu'il avait rendues relevaient de sa compétence. Si le juge a commis des erreurs de droit au cours de l'instance, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet et sont, sans preuve d'inconduite judiciaire, hors du champ de compétence du CMO. Le comité du champ de compétence du CMO. Le comité cet sont, sans preuve d'inconduite judiciaire, hors cet sont, sans preuve d'inconduite judiciaire, hors du champ de compétence du CMO. Le comité cet sont a souscrit à la recommandation du souscomité des plaintes que la plainte soit rejetée.

#### **DOSSIEK NO 07-018/01**

e plaignant a fourni les renseignements demandes de la défense qui avaient été déposées au tribunal. au procès et de fournir une copie de la plainte et été soulevées lors de la conférence préparatoire au plaignant de décrire les questions qui avaient ordonné au sous-comité des plaintes de demander avant de rendre sa décision en l'espèce, et a amen a demandé davantage de renseignements des commentaires irrespectueux. Le comité d'exindiqué qu'il n'avait jamais eu l'intention de faire plaintes a également rapporté que le juge avait comme telle par les parties. Le sous-comité des qui ait pu être offensante ou être interprétée réponse, le juge s'était excusé de toute remarque mandé que la plainte soit rejetée car, dans sa sa réponse. Le sous-comité des plaintes a recomplaintes a soumis la plainte au juge et a examiné remarques antisémites. Le sous-comité des plus précisément, que le juge avait fait des tunes concernant les trois parties devant lui et, procès, le juge avait fait des remarques inopporqu'au cours de la conférence préparatoire au juge au nom d'un client. Le plaignant alléguait dans ce cas particulier, il s'était présenté devant le plusieurs années. Le plaignant indiquait que devant le juge visé par la plainte pendant Le plaignant était un avocat qui s'était présenté

### DOSSIER NO 07-016/01

comité des plaintes que la plainte soit rejetée. d'examen a souscrit à la recommandation du sousla prison, de la poursuite ni du tribunal. Le comité n'était pas responsable des actes du personnel de entendu la motion et que, par ailleurs, le juge conduite judiciaire de la part du juge qui avait qu'elle ne contenait pas de plainte précise d'ina recommandé que la plainte soit rejetée parce dont il faisait l'objet. Le sous-comité des plaintes se défendre correctement contre les accusations empêché de donner une réponse complète et de exemplaire du Code criminel et que cela l'avait il n'avait pas eu la possibilité de consulter un ailleurs qu'au cours de l'audience d'une motion, Code criminel au tribunal. Il se plaignait par permis d'emporter avec lui son exemplaire du prison où il était incarcéré ne lui avaient pas Le plaignant indiquait que les autorités de la

### **DOSSIEK NO 02-012/01**

duite judiciaire de la part du juge dans la façon il estimait qu'il n'y avait pas de preuve d'inconentraver le cours de la justice et que, par ailleurs, l'appui des allégations de conspiration pour parce qu'il n'existait pas de preuve objective à plaintes a recommandé que la plainte soit rejetée questions de procédure. Le sous-comité des juge tout au long du procès et de différentes allégations au sujet des décisions rendues par le tice ». Le plaignant faisait également plusieurs « conspiration pour entraver le cours de la jusavec une greffière » et avait ainsi participé à une participé à des discussions « dans les coulisses était dû à l'ingérence du juge, et que le juge avait transcriptions qu'il avait commandées et que cela Le plaignant alléguait qu'il n'avait pas reçu les

qu'il n'y avait pas de preuve de préjugé contre le plaignant. Le sous-comité des plaintes a également noté que le plaignant pouvait faire appel de la décision. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### DOSSIER NO 07-014/01

plainte soit rejetée. mandation du sous-comité des plaintes que la CMO. Le comité d'examen a souscrit à la recomjudiciaire, hors du champ de compétence du d'un appel et sont, sans preuve d'inconduite trouvé à cet égard, ces erreurs peuvent faire l'objet Conseil de la magistrature de l'Ontario n'a rien des erreurs de droit au cours de l'instance, et le plaignant avait été présent. Si la juge a commis aire de la part de la juge à aucune des dates où le et, qu'à son avis, il n'y avait eu inconduite judiciloi et aux preuves qui lui avaient été présentées une ordonnance intérimaire conformément à la d'expliqué la loi pertinente au plaignant, rendu que la juge avait appliqué la loi pertinente, tenté alléguait. Le sous-comité des plaintes a rapporté que la juge n'avait pas fait ce que le plaignant plainte soit rejetée car la transcription révélait sous-comité des plaintes a recommandé que la une copie de la transcription des preuves. Le sous-comité des plaintes a ordonné et examiné avait tenté de dissimuler ce qu'elle avait fait. Le contre lui en l'absence d'une audience et qu'elle justice sondamentale en rendant une ordonnance première instance avait violé les principes de la encontre. Le plaignant alléguait que la juge de avocat, était le débiteur dans une poursuite à son Le plaignant, qui n'était pas représenté par un

en ce qui concernait ce plaignant particulier. Le sous-comité des plaintes a noté que le juge ne pouvait pas être tenu responsable des propos ans fondement publiés dans les médias ni de la qualité de la représentation fournie au plaignant par son avocat. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

#### **DOSSIEK NO 07-012/01**

que la plainte soit rejetée. recommandation du sous-comité des plaintes judiciaire. Le comité d'examen a souscrit à la que cela, en soi, ne représente pas une inconduite juge ait confirmé la décision du juge de paix mais noté que le plaignant n'aimait pas le fait que le dans la plainte. Le sous-comité des plaintes a ciaire de la part du juge de la Cour de l'Ontario car il n'y avait pas d'allégation d'inconduite judiplaintes a recommandé que la plainte soit rejetée s'opposait à cette décision. Le sous-comité des firmé la décision du juge de paix, et le plaignant de la Cour de justice de l'Ontario qui avait conavait fait appel de cette décision devant un juge paix en vertu du Code de la route. Le plaignant Le plaignant avait été condamné par un juge de

### **DOSSIEK NO 01-013/01**

Le plaignant était partie à un conflit concernant la garde d'un enfant. Le plaignant alléguait qu'il y avait eu discrimination parce que le juge donnait « la garde unique à une femme qui non seulement violait une ordonnance de garde conjointe mais également sa propre ordonnance ». Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que le juge avait rendu une décision concernant la garde et l'accès, et une décision concernant la garde et l'accès, et

l'Ontario n'a rien trouvé à cet égard, ces erreurs peuvent faire l'objet d'un appel et sont, sans preuve d'inconduite judiciaire, hors du champ de compétence du CMO. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### **DOSSIER NO 07-011/01**

cise d'inconduite de la part du juge en question que la plainte soit rejetée faute d'allégation préjuge. Le sous-comité des plaintes a recommandé d'éviter que son procès ne soit instruit devant ce échange d'une libération sous condition afin avait été forcé d'enregistrer un plaidoyer en cause de cette « terrible réputation » du juge, il plètement terrifié ». Le plaignant alléguait qu'à se retrouvait sans représentation, avait été « comil avait appris qui était le juge et que l'accusé, qui cour le matin de son procès, « était parti » quand ment que l'avocat d'un autre accusé, qui était en paraissait devant lui. Le plaignant alléguait égaleses témoins alléguaient contre l'accusé qui comtence, et qu'il croyait tout ce que la poursuite et extrêmement dur dans ses prononcés de sennant, et que le juge avait la réputation d'être article de journal paru avant le procès du plaig-« l'un des trois pires juges de la ville » dans un ration que le juge avait apparemment été nommé Sa plainte contre le juge consistait en une décla-Couronne était déterminé à le faire condamner. incompétent et que le Bureau du procureur de la son avocat de la défense était complètement de crime ». Le plaignant alléguait par ailleurs que depuis un an » alors qu'il n'avait « pas commis et [avait été] soumis à des préjudices constants arrêté, jeté en prison pendant plusieurs semaines ne [lui avait été] d'aucune utilité». Il [avait été] Le plaignant alléguait que « le système judiciaire

ne pas présenter de preuves à la fin de l'exposé de la poursuite. Si la juge a commis des erreurs de droit au cours de l'instance, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet égard, ces erreurs peuvent faire l'objet d'un appel et sont, sans preuve d'inconduite judiciaire, hors du champ de compétence du CMO. Le comité d'examen a souscrit à la recommandation du souscomité des plaintes que la plainte soit rejetée.

#### **DOSSIER NO 07-010/01**

préliminaire, et le Conseil de la magistrature de commis des erreurs de droit pendant l'enquête dant l'enquête préliminaire, et que si le juge a juge ni dans les décisions qu'il avait rendues pend'inconduite judiciaire dans le comportement du par ailleurs qu'à son avis, il n'y avait pas de preuve à cet égard. Le sous-comité des plaintes a noté Conseil de la magistrature n'avait pas compétence allégations d'inconduite judiciaire et que le sonores et des transcriptions n'étaient pas des estimait que les plaintes au sujet des bandes son cabinet). De plus, le sous-comité des plaintes que le témoin avait retenu, mais un associé de (bien que l'avocat présent n'ait pas été l'avocat par un avocat pendant l'enquête préliminaire rejetée parce que le plaignant avait été représenté des plaintes a recommandé que la plainte soit préliminaire n'étaient pas exactes. Le sous-comité sonore et la transcription de son enquête Le plaignant alléguait par ailleurs que la bande témoin eu égard à son activité criminelle passée. n'avait pas autorisé le contre-interrogatoire d'un les services n'ait pas été présent, et que le juge poursuivre, bien que l'avocat dont il avait retenu avait agi de façon incorrecte en « le forçant » à préliminaire. Le plaignant alléguait que le juge Le plaignant était allé en cour pour une enquête

des erreurs de droit au cours de l'instance, et le Conseil de la magistrature de l'Ontario n'a rien trouvé à cet égard, ces erreurs peuvent faire l'objet d'un appel et sont, sans preuve d'inconduite judiciaire, hors du champ de compétence du CMO. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

#### **DOSSIER NO 07-008/01**

ailleurs que l'avocat du plaignant avait choisi de compétence en common law et il a noté par judiciaire dans le fait que la juge avait exercé sa mait qu'il n'y avait pas de preuve d'inconduite recommandé que la plainte soit rejetée car il estiétaient insuffisants. Le sous-comité des plaintes a les motifs d'accusation de harcèlement criminel coupable et a rendu un non-lieu en notant que a également trouvé le plaignant/accusé non sonne qu'il était supposé avoir harcelée. La juge condition était qu'il devait rester loin de la perpublic avec une seule condition, et que cette engagement d'un an de ne pas troubler l'ordre demandé au plaignant/accusé de prendre un avait exercé sa compétence en common law et que la poursuite eût terminé son exposé, la juge sous-comité des plaintes a rapporté que, après transcription des preuves. Après examen, le plaintes a ordonné et examiné une copie de la tout au long de l'instance. Le sous-comité des que le plaignant était représenté par un avocat propre. Le sous-comité des plaintes a rapporté mon nos n'avait pas été autorisé à parler en son nom ment commun » (sic). Il se plaignait également dente l'avait condamné à « une année d'engagejuge l'eût trouvé « non coupable », la juge présiet déclarait que, après son procès et après que la Le plaignant était accusé de harcèlement criminel

qu'il n'y avait pas de preuve d'inconduite judiciaire dans le comportement du juge ni dans les décisions qu'il avait rendues pendant l'instance, et qu'il était convaincu que le juge n'avait pas de conflit d'intérêtes et ne connaissait pas l'accusé. Si le juge a commis des erreurs de droit au cours de l'instance, et le Conseil de la magistrature de l'instance, et le Conseil de la magistrature de l'ontario n'a rien trouvé à cet égard, ces erreurs peuvent faire l'objet d'un appel et sont, sans peuvent faire l'objet d'un appel et sont, sans compétence du CMO. Le comité d'examen a souscrit à la recommandation du sous-comité des souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### **DOSSIEK NO 01-001/01**

relevaient de sa compétence. Si le juge a commis maternels, et que les décisions qu'il avait rendues pour attribuer la garde aux grands-parents le juge avait utilisé son pouvoir discrétionnaire preuve d'inconduite judiciaire dans la façon dont soit rejetée car il estimait qu'il n'y avait pas de comité des plaintes a recommandé que la plainte paternels (la plaignante et son mari). Le sousavait pas attribué la garde ni aux grands-parents contre son fils, le père de l'enfant, puisqu'il ne lui maternels, était incompétent et avait des préjugés temporaire de l'enfant à ses grands-parents alors que le juge, qui avait attribué la garde reçu la décision du juge. La plaignante alléguait temps après indiquant que les parties avaient en cette affaire. Une autre lettre avait suivi peu de prenait trop longtemps pour rendre une décision Souj əl əup alleguait que le juge plaignante. La première lettre de la plaignante au de l'enfant de leur mariage, le petit-fils de la avec son ancienne conjointe concernant la garde Le fils de la plaignante était partie à un conflit mandé que la plainte soit rejetée car il estimait allégué. Le sous-comité des plaintes a recomqu'il l'ajournerait comme la plaignante l'avait pendrait l'instance si le téléphone sonnait, et non il a noté qu'il avait prévenu la cour qu'il susqu'il attendait l'appel du médecin de sa femme et Le juge a également nié qu'il ait été distrait parce instances criminelles et des règles de la preuve. résultat de son manque de connaissances des la plaignante comme étant sans fondement ou le réfuté par ailleurs les nombreuses allégations de n'avait pas de liens avec la collectivité. Le juge a ne connaissait aucune des parties en cause et pour présider ce procès précisément parce qu'il juge a déclaré qu'il avait été appelé de l'extérieur tion qu'il connaissait l'accusé. Dans sa réponse, le sa réponse, particulièrement eu égard à l'allégaplaintes a 19 oguj us otainte la simuos e estaninfo protéger son ancien conjoint. Le sous-comité des les personnes en cause cherchaient seulement à sətuot úo « sásoorq ab arsalumis » nu'b iga tista's séder des armes; et elle avait enfin allégué qu'il conjoint (un agent de police à la retraite) de pospublic, qu'il avait refusé d'empêcher son ancien de signer un engagement de ne pas troubler l'ordre été déposées lorsqu'il avait ordonné aux parties minimisé les accusations criminelles qui avaient ter lorsque le téléphone sonnerait, qu'il avait du médecin de sa femme et qu'il devrait s'absendès le début qu'il attendait un coup de téléphone distrait pendant le procès puisqu'il avait déclaré de la Couronne à déposer, était de toute évidence ancien conjoint, n'avait pas autorisé les témoins preuves concernant la violence passée de son témoignage, ne lui avait pas permis de donner ses l'avocat de la défense l'importuner pendant son nante alléguait également que le juge avait laissé même continué à présider l'instance. La plaig-

souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### DOSSIER NO 07-004/01

comité des plaintes que la plainte soit rejetée. men a souscrit à la recommandation du sousdes généralisations sans preuve. Le comité d'exaduite judiciaire dans la plainte, mais seulement qu'il n'y avait pas d'allégation précise d'inconmandé que la plainte soit rejetée car il estimait poste ». Le sous-comité des plaintes a recomfemmes et qu'elle n'[était] pas digne d'occuper ce [avait] affiché de très forts préjugés en faveur des tice, voire accusée de meurtre, parce qu'elle -sul al resnagai de dispenser la juschargée du bébé. Le plaignant alléguait que la du bébé et la travailleuse sociale de la SAE poursuites criminelles préalables contre la mère plainte n'était pas associée à l'enquête mais à des indiqué par ailleurs que la juge visée par la d'aide à l'enfance. Le sous-comité des plaintes a Heikamp et la réaction de la Société catholique les recommandations de l'enquête sur Jordan plaintes a indiqué que la principale plainte visait séparation ou un divorce. Le sous-comité des avoir un accès égal aux deux parents après une qui détend la position que les enfants devraient Le plaignant était le président d'un organisme

### DOSSIER NO 07-005/01

La plaignante était la victime alléguée de voies commises par son ancien conjoint, et avait plusieurs plaintes au sujet de l'instance et de la conduite de la police. Sa principale allégation conduite de la police. Sa principale allégation dans un conflit d'intérêts puisqu'il connaissait dans un conflit d'intérêts puisqu'il connaissait l'intimé (son ancien mari), mais qu'il avait quand l'intimé (son ancien mari), mais qu'il avait quand

une signature. Le sous-comité des plaintes au indiqué que les deux lettres étaient revenues au Conseil avec la marque « Déménagé/Inconnu/Retour à l'envoyeur ». Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée, sous réserve de réouverture du dossier si le plaignant fournissait les renseignements demandés.

### DOSSIER NO 07-003/01

comprenait ce qu'il faisait. Le comité d'examen a retenu les services), et qu'il avait déclaré qu'il son propre avocat (dont il avait de nouveau public après avoir parlé à l'avocat de service et à signé un engagement de ne pas troubler l'ordre révélait que le plaignant avant volontairement comité des plaintes a noté que la transcription conduite judiciaire de la part du juge. Le sousla transcription ne contenait pas de preuve d'inmandé que la plainte soit rejetée car il estimait que le plaignant. Le sous-comité des plaintes a recomcopie de la transcription des preuves fournie par nant. Le sous-comité des plaintes a examiné une lic », ce qui était contraire aux désirs du plaigun « engagement de ne pas troubler l'ordre puballéguait que le juge lui avait ordonné de signer ter lui-même en cette affaire. Le plaignant pour cette raison et avait décidé de se représenla communication de la preuve, l'avait congédié son avocat avait pris trop longtemps pour obtenir tion de la preuve. Le plaignant avait trouvé que de non-culpabilité et demandé une communicatribunal et son avocat avait inscrit un plaidoyer son avocat. Le plaignant était arrivé en retard au que la plainte principale du plaignant concernait menaces. Le sous-comité des plaintes a rapporté accusation d'intimidation et d'avoir proféré des Le plaignant avait comparu pour répondre d'une

du sous-comité des plaintes que la plainte soit rejetée. comité d'examen a souscrit à la recommandation hors du champ de compétence du CMO. Le appel et sont, sans preuve d'inconduite judiciaire, égard, ces erreurs peuvent faire l'objet d'un magistrature de l'Ontario n'a rien trouvé à cet lors de l'audience préliminaire, et le Conseil de la et que, si le juge a commis des erreurs de droit preuve d'inconduite judiciaire de la part du juge soit rejetée car il estimait qu'il n'y avait pas de plaintes a également recommandé que la plainte d'un témoir de la poursuite. Le sous-comité des vention" du juge lors du contre-interrogatoire incident se soit produit), ou à la supposée "interdans la salle d'audience, (en admettant que cet tion juridique au fait que la secrétaire était entrée et que ce dernier n'avait soulevé aucune objecun avocat pendant toute l'audience préliminaire rejetée parce que le plaignant était représenté par préliminaire et a recommandé que la plainte soit

### DOSSIER NO 07-002/01

et la seconde par poste prioritaire, ce qui requérait une lettre avait été envoyée par la poste ordinaire nant demandant davantage de renseignements indiqué qu'il avait envoyé deux lettres au plaigmotif d'abandon. Le sous-comité des plaintes a a recommandé que la plainte soit rejetée pour « très bien ». Le sous-comité des plaintes avaient un employeur commun et se connaissaient le juge et l'ancienne conjointe [du plaignant] dire dans un affidavit. Il alléguait également que droit, et lui avait dit comment procéder et quoi conseillée précédemment sur des questions de l'ancienne conjointe du plaignant et qu'il l'avait d'intérêts et des préjugés puisqu'il connaissait sa cause en Cour de la famille avait un conflit Le plaignant alléguait que le juge qui présidait

> du sous-comité des plaintes que la plainte soit comité d'examen a souscrit à la recommandation tention des gardes de sécurité du tribunal. Le que la plaignante aurait dû porter l'affaire à l'atne serait pas toléré dans la salle d'audience, et passé dans la salle d'attente mais que pareil geste par ailleurs qu'elle ne savait pas ce qui s'était que cette personne s'était excusée. La juge notait la personne de son comportement inopportun et juge ajoutait que l'agent de sécurité avait parlé à qu'elle l'avait signalée à l'agent de sécurité. La ituel lors de l'audience de causes conjugales, et tribunal, ce qui, ajoutait-elle, n'était pas inhabsonne qui s'était montrée disficile et bruyante au que la juge se souvenait effectivement d'une percomplète. Le sous-comité des plaintes a rapporté la réponse de la juge constituait une explication a recommandé que la plainte soit rejetée parce que

### DOSSIER NO 07-001/01

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plaintes a examiné la transcription de l'audience par là même sa défense. Le sous-comité des l'un des témoins de la Couronne et compromis la tentative de son avocat de contre-interroger également que le juge avait « entravé indûment » là où elle s'était assise. Le plaignant alléguait et pourquoi elle était venue dans la salle s'asseoir parce qu'il savait sans doute qui était la secrétaire luge avait participé à cette « erreur judiciaire » accusé en question. Le plaignant alléguait que le d'aider un témoin à la barre à identifier le codirectement derrière l'un de ses co-accusés afin policiers était entrée dans la salle et s'était assise préliminaire, la secrétaire de l'un des enquêteurs tion. Le plaignant alléguait qu'au cours de l'audience préliminaire concernant plusieurs chefs d'accusa-Le plaignant avait comparu pour une audience

du sous-comité des plaintes que la plainte soit comité d'examen a souscrit à la recommandation aire, hors du champ de compétence du CMO. Le appel et sont, sans preuve d'inconduite judicicet égard, ces erreurs peuvent faire l'objet d'un de la magistrature de l'Ontario n'a rien trouvé à juge a commis des erreurs de droit, et le Conseil indiquait que la transcription était exacte. Si le et de la bande sonore de la journée en question ailleurs qu'une comparaison de la transcription cause. Le sous-comité des plaintes a noté par son pouvoir discrétionnaire pour entendre la judiciaire dans la façon dont le juge avait exercé car il estimait qu'il n'y avait pas eu inconduite plaintes a recommandé que la plainte soit rejetée la bande sonore des preuves. Le sous-comité des le plaignant et ordonné et examiné une copie de examiné une copie de la transcription fournie par totalement fictive. Le sous-comité des plaintes a présences au tribunal et que la transcription était torisant pas la présentation du registre des que le juge avait supprimé des preuves en n'audre la cause. Le plaignant alléguait par ailleurs

#### DOSSIER NO 06-055/00

La plaignante avait comparu pour une affaire conjugale et declaran qu'elle etan generalement insatisfaite de la façon dont la juge avait présidé sa cause. La plaignante alléguait que la juge avait permis à l'autre partie à l'instance de rivaliser en cour à qui crierait le plus fort. La plaignante alléguait également que la juge avait permis à la alléguait également que la juge avait permis à la partie adverse de montrer le poing à une autre partie adverse de montrer le poing à une autre partie adverse de montrer le poing à une autre dersonne dans la salle d'attente attenante au tribunal en presence d'un bebe. Le sous-comité des plaintes a soumis la plainte à la juge et a des plaintes a soumis la plainte à la juge et a examiné sa réponse. Le sous-comité des plaintes examiné sa réponse. Le sous-comité des plaintes

#### DOSSIER NO 06-052/00

sous-comité des plaintes que la plainte soit rejetée. comité d'examen a souscrit à la recommandation du l'accusation de « menace de causer la mort ». Le de causer des lésions corporelles » est incluse dans des plaintes a noté que l'accusation de « menace champ de compétence du CMO. Le sous-comité sans preuve d'inconduite judiciaire, hors du erreurs peuvent faire l'objet d'un appel et sont, ture de l'Ontario n'a rien trouvé à cet égard, ces des erreurs de droit, et le Conseil de la magistrarelevaient de sa compétence. Si le juge a commis naire et que les décisions qu'il avait rendues dont le juge avait exercé son pouvoir discrétionavait pas d'inconduite judiciaire dans la façon que la plainte soit rejetée car il estimait qu'il n'y nant. Le sous-comité des plaintes a recommandé la transcription des preuves fournie par le plaigsous-comité des plaintes a examiné une copie de indiquait « des menaces de causer la mort ». Le des lésions corporelles » alors que l'accusation coupable d'avoir proféré « des menaces de causer plaignant ajoutait que le juge l'avait trouvé n'était pas capable d'administrer la justice. Le li'up 19 riovuoq nos sesegortuo tieve sgul sl ordonnance de la cour. Le plaignant alléguait que un chef d'accusation d'inobservation d'une chets d'accusation de profération de menaces et Le plaignant avait comparu en cour sous trois

#### DOSSIER NO 06-053/00

Le plaignant, qui n'était pas représenté par un avocat, avait comparu pour répondre d'une accusation d'une ordonnance de la cour. Le plaignant alléguait que l'accusation d'inobservation avait et retirce precedemment en cour, que le juge le savait et qu'il avait « dissimulé la chose » lorsqu'il avait décidé d'entensimulé la chose » lorsqu'il avait décidé d'enten-

### **DOSSIEB NO 06-021/00**

plainte soit rejetée. mandation du sous-comité des plaintes que la nant. Le comité d'examen a souscrit à la recomallégations de préjugé et d'inconduite du plaigil estimait que les preuves n'appuyaient pas les et a recommandé que la plainte soit rejetée car la transcription des preuves lorsqu'il l'a reçue stance. Le sous-comité des plaintes a examiné parlerait d'elle-même quant à l'intégrité de l'inavaient été enregistrés, et que la transcription nant avaient eu lieu en séance publique et juge a noté que tous ses rapports avec le plaigde prononcé de la sentence. Dans sa réponse, la ainsi que des instances qui avaient suivi aux fins tion des instances qui avaient eu lieu ce jour-là réponse, et cette dernière a ordonné la transcripa soumis la plainte à la juge et a examiné sa « condamner à tort ». Le sous-comité des plaintes et utilisé une erreur typographique pour le ailleurs que la juge avait « supprimé des preuves » prévenue contre lui. Le plaignant alléguait par duite évidente » de la juge, et que la juge était alléguait qu'il avait été « victimisé par l'inconaccusation de harcèlement criminel. Le plaignant Le plaignant avait comparu pour répondre à une

#### DOSSIEB NO 06-050/00

des plaintes que la plainte soit rejetée. a souscrit à la recommandation du sous-comité du Conseil de la magistrature. Le comité d'examen être vérifiés, ils n'auraient pas justifié l'intervention des plaintes estimait que, même s'ils avaient pu attribués par le plaignant à la juge, le sous-comité subir un procès. Quant aux commentaires avait décidé que le plaignant était en mesure de judiciaire de la part de la juge dans le fait qu'elle car il estimait qu'il n'y avait pas eu inconduite plaintes a recommandé que la plainte soit rejetée d'avoir une transcription. Le sous-comité des tion et qu'en conséquence, il n'était pas possible retrouver la bande sonore de la journée en quesavait chargée de la transcription ne pouvait pas procès était décédée et que le sténographe qu'elle été informé que la greffière qui s'était occupé du scription des preuves de cette instance, mais il a des plaintes a ordonné une copie de la tranculière ni de l'accusé en question. Le sous-comité elle ne pouvait pas se souvenir de la cause partijuge, mais elle a répondu que, sans transcription, sous-comité des plaintes a soumis la plainte à la plaignant qui se prenait pour une « star ». Le désagréables sur le « délire des grandeurs » du et qu'elle avait également fait des remarques que la juge avait voulu poursuivre quand même lettre qu'il était « inapte à subir un procès », mais à des accusations criminelles. Il déclarait dans sa Le plaignant avait comparu en cour pour répondre

### DOSSIER NO 06-049/00

des plaintes que la plainte soit rejetée. souscrit à la recommandation du sous-comité de compétence du CMO. Le comité d'examen a preuve d'inconduite judiciaire, hors du champ peuvent faire l'objet d'un appel et sont, sans l'Ontario n'a rien trouvé à cet égard, ces erreurs de droit, et le Conseil de la magistrature de sa compétence. Si le juge a commis des erreurs que les décisions qu'il avait rendues relevaient de le juge avait exercé son pouvoir discrétionnaire et preuve d'inconduite judiciaire dans la façon dont porté par ailleurs qu'à son avis, il n'y avait pas de du plaignant. Le sous-comité des plaintes a rappas de preuve à l'appui de l'allégation de préjugé soit rejetée parce qu'il était d'avis qu'il n'existait comité des plaintes a recommandé que la plainte d'autres renseignements du plaignant. Le sousdes plaintes a rapporté qu'il n'avait pas reçu pour l'aider dans son enquête. Le sous-comité de renseignements au Conseil de la magistrature lettre de l'avocat et de fournir également davantage pour lui demander de lui envoyer le reste de la sous-comité des plaintes a écrit au plaignant lettre qui lui avait été envoyée par son avocat. Le plaignant avait joint à sa plainte une partie d'une communication du dossier de la Couronne. Le ticiper à un procès avant qu'ils aient reçu pleine plaindre que le juge avait obligé les intimés à parnant a écrit au Conseil de la magistrature pour se une conférence préparatoire au procès. Le plaigétaient accusées avec lui, devant un juge pour avait comparu, avec plusieurs des personnes qui Le plaignant, qui était représenté par un avocat,

que la plainte soit rejetée. recommandation du sous-comité des plaintes ment. » Le comité d'examen a souscrit à la séparation représente déjà un tel bouleverseplus possible comme elles sont du fait que la saçon générale, on essaie de garder les choses le garde de l'enfant au père et l'accès à la mère. De séparation, il faudrait changer cela et donner la elle, je ne vois pas très bien pourquoi, après une voyageur de commerce et que la mère restait chez la situation avant la séparation. Si le père était commentaire par l'exemple suivant : « Regardez meilleur intérêt des enfants. Le juge a illustré son généralement de conserver le statu quo dans le tion de la garde des enfants, que l'on essaie déclaré, au cours de l'émission eu égard à la quesment noté que le juge visé par la plainte avait y participer). Le sous-comité des plaintes a égaleleurs enfants (et dans certains cas à commencer à encouragés à continuer à participer à la vie de pères, après une séparation, devraient être intérêts de l'enfant qui prévalent et que certains avaient insisté sur le fait que ce sont les meilleurs s'agit de la garde des enfants, et les deux juges que la loi penche en faveur des femmes lorsqu'il déclaré que certaines personnes peuvent penser présentateur du programme de télévision avait de préjugé. Dans sa réponse, le juge notait que le que la bande vidéo n'appuyait pas les allégations que la réponse du juge était complète et juste, et mandé que la plainte soit rejetée car il estimait plaignants. Le sous-comité des plaintes a recomvidéo du programme de télévision fournie par les sa réponse, et il a regardé une copie de la bande tence du conseil de la megistrature) et a examiné au juge de l'Ontario (qui relevait de la compé-Le sous-comité des plaintes a soumis la plainte

morifs de jugement, de présenter les faits commises il les voyait. Si des erreurs de droit ont été commises par le juge dans la façon dont il a interprété les faits ou si le juge a fait preuve de préjugé, et le trouvé à cet égard, ces erreurs peuvent faire l'objet d'un appel et sont, sans preuve d'inconduite judiciaire, hors du champ de compétence du CMO. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### EL 09-048/00 DOSSIEK NO 09-042/00

voyageurs de commerce ». donnée à ces hommes et particulièrement à des divorce... que la garde ne devrait jamais être n'avaient pas été 'de bons pères' avant le ne s'occupent pas de leurs entants et qu'ils ailleurs que les juges estimaient que « les pères tribunaux. » Les plaignants alléguaient par partialité que nous [le public] attendons des personnels, en contradiction directe avec l'imsion, les juges « avaient exprimé leurs préjugés alléguaient que, dans le programme de télévijuges confirmaient cette opinion. Les plaignants garde des enfants après un divorce et que les plupart des cas, d'être de bons parents s'ils ont la l'opinion que les pères sont incapables, dans la le présentateur du programme avait formulé Television Network. Les plaignants alléguaient que divorce et la garde des enfants du Women's qui avaient participé à un programme sur le vinciales différentes (Manitoba et Ontario) strature concernant deux juges de deux cours Deux plaignants ont écrit au Conseil de la magi-

de garde a dit à l'enquêteur qu'elle estimait que la réunion avait traité des problèmes courants concernant la préparation des affaires en cours, les ajournements et les préoccupations générales concernant les enfants à risque, et que c'était une réunion positive pour aider la société lors de ses audiences à venir au tribunal.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée parce que, bien qu'il soit évident que le juge A ait exprimé son opinion, à la demande du directeur général de la SAE locale, eu égard à la qualité de la représentation que plaignants, le contexte dans lequel l'opinion avait été exprimée ne représentait pas une inconduite judiciaire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### DOSSIER NO 06-046/00

plaintes a noté que le juge avait le droit, dans ses les allégations du plaignant. Le sous-comité des et que rien dans la transcription n'appuyait preuve d'inconduite judiciaire de la part du juge soit rejetée car il estimait qu'il n'y avait pas de comité des plaintes a recommandé que la plainte des preuves fournie par le plaignant. Le sousplaintes a examiné une copie de la transcription contre son ancienne épouse. Le sous-comité des nant dans l'enquête et à l'accusation d'agression motif, particulièrement eu égard au rôle du plaigde la preuve et avait conclu à certains faits sans était partial, avait fait une interprétation erronée nant alléguait que le juge de première instance épouse avait agressé leur fils de six ans. Le plaigà une instance où il alléguait que son ancienne Le plaignant, qui est agent de police, était partie

enfants en cause. cupation des juges quant au bien-être des commentaires émis étaient motivés par la préocde la SAE a ajouté qu'il était d'avis que les qui compte treize membres. Le directeur général relève du conseil d'administration de la société pouvoir d'engager ou de révoquer des avocats des rôles. Le directeur général a indiqué que le de sa réunion avec les juges et le coordonnateur médiocre du cabinet en cause à l'époque avocats à cause du rendement régulièrement préparait déjà à faire appel à de nouveaux trat avec le cabinet d'avocats, et que la société se taient pas été à l'origine de l'annulation du coninformé l'enquêteur que les commentaires n'éque la SAE savait déjà. Le directeur général a rien de nouveau et n'avaient sait que rensorcer ce qui avaient pu être faits à la réunion n'avaient depuis plusieurs mois, et que les commentaires soulevés lors de la réunion du 3 août existaient problèmes concernant les avocats qui avaient été Le directeur général a dit à l'enquêteur que les général quant à ce qui avait été discuté à la réunion. avaient confirmé les souvenirs du directeur du personnel de la SAE qui étaient présents rapport de l'enquêteur, les deux autres membres salle de réunion du palais de justice. D'après le comme allégué par les plaignants, mais dans une eu lieu le 3 août et ne s'était pas tenue en chambre, directeur général a indiqué que la réunion avait

L'enquêteur a également interrogé les autres membres de la SAE qui avaient participé à la réunion. Le directeur des services à la famille a indiqué qu'il estimait que la raison d'être de la réunion du 3 août était d'apporter des améliorations au système, et il a corroboré la version des évênements donnée par le directeur général. La directrice des services de réception et des services

concernant la motion, et il a déclaré qu'il n'avait essayé d'aucune façon d'empêcher le cabinet d'avocats de demander un examen en appel de son rejet.

.xuəigolə´up des plaignants avaient été aussi bien critiques juge A sur certains membres du cabinet d'avocats elle a fait remarquer que les commentaires du juridiques dispensés par le cabinet d'avocats et n'avait pas fait de commentaires sur les services avec lui à la réunion. La juge B a indiqué qu'elle échéant, le directeur général pourrait amener même pas demandé quelles personnes, le cas d'avocats des plaignants, et qu'elle ne s'était l'autre avocat représentant la SAE ou du cabinet fait pour empêcher la participation de l'un ou ajouté qu'elle n'avait pas voulu empêcher ni rien les causes de protection de l'enfance, et elle a avec le directeur général et les juges qui président coordonnateur des rôles d'organiser la réunion La juge B a indiqué qu'elle avait demandé à un par le cabinet d'avocats des plaignants à la SAE. indirecte, des services professionnels dispensés au tribunal ni pour parler, de façon directe ou convoquée pour discuter des causes présentées juge B indiquait que la réunion n'avait pas été nion avait été organisée avec son approbation. La lissement utilisateur du tribunal, et que cette réudes affaires mettant en cause la SAE à titre d'étabnion informelle pour discuter de la mise au rôle d'inviter le directeur général de la SAE à une réuqu'elle avait suggéré à son juge administratif local Dans sa réponse à la plainte, la juge B a indiqué

Le Conseil de la magistrature a retenu les services d'un enquêteur privé qui a interrogé le directeur général de la SAE ainsi que les autres employés de la SAE qui étaient présents à la réunion. Le

SAE serait présent à la réunion, mais qu'il ne savait pas qu'aucune personne du cabinet d'avocats n'avait été invité. Le juge A a également déclaré qu'il ne savait pas qui d'autre serait à la réunion outre d'autres membres de la magistrature.

placer le cabinet dont elle avait retenu les services. pas, en fait, que la SAE envisageait même de remle cabinet d'avocats. Il a indiqué qu'il ne savait la SAE allait poursuivre ou non ses rapports avec que ses remarques soient utilisées pour décider si également indiqué qu'il n'avait pas eu l'intention quiconque, sans motif ni autrement. Le juge A a au sujet d'un membre du cabinet d'avocats à avoir jamais prononcé de commentaires insultants faire sur leur niveau de rendement, et il a nié lorsqu'il estimait qu'il avait des commentaires à privées, aux membres du cabinet d'avocats dit directement, au tribunal et lors de réunions même nature et de même qualité que ce qu'il avait avait dit au directeur général de la SAE était de avait présidées. Le juge A a ajouté que ce qu'il ment les intérêts de la SAE dans les causes qu'il avocats qu'il estimait avoir représenté correctefaçon franche et ouverte et qu'il avait nommé les b noinigo nos ennob tieve l'up etalo de A agui reçue lors des instances qu'ils présidaient. Le la qualité de représentation que la SAE avait de la magistrature présents ce qu'ils pensaient de général de la SAE avait demandé aux membres Le juge A a déclaré qu'à la réunion, le directeur

Eu égard à la question de la motion présentée par le cabinet d'avocats pour demander au juge A de refuser de présider à l'avenir les causes pour lesquelles des membres du cabinet d'avocats pourraient représenter la SAE, le juge A a nié avoir fait quoi que ce soit pour retarder l'approavoir fait que ce soit pour l'approavoir que ce soit po

représentant, et que le juge A avait refusé. Les plaignants alléguaient par ailleurs que le juge A « avait retardé de façon anormale l'approbation » d'une transcription de cette dernière instance en cour, sachant que les plaignants avaient l'intention de l'utiliser pour saisir le Conseil de la magistrature d'une plainte le concernant.

Le sous-comité des plaintes a demandé aux deux juges de répondre aux plaintes dont ils faisaient l'objet. Le sous-comité des plaintes a également retenu les services d'un enquêteur privé pour interroger les employés de la SAE qui étaient présents à la réunion.

ajouté qu'il savait que le directeur général de la d'aucune façon à son organisation. Le juge A a ne l'avait pas convoquée et qu'il n'avait participé li'up, noinuèr al uvèrq pas prévu la réunion, qu'il laquelle avait été organisée par un tiers. Il a qu'il avait été invité à participer à la réunion, responsable et professionnelle. Le juge A a jouté représenter les intérêts de la SAE de façon ce que les avocats de son cabinet soient prêts à prendrait les mesures appropriées pour veiller à question, et que ce dernier l'avait assuré qu'il l'ancien avocat principal du cabinet d'avocats en part de ses préoccupations à plus d'une reprise à il se devait. Le juge A a indiqué qu'il avait fait intérêts de la justice n'étaient pas servis comme ces instances et, ce qui était plus important, les estimait que les intérêts des parties en cause dans instances mettant en cause la SAE. Le juge A qui devaient être examinées par la cour lors des par leur manque de connaissances des questions manque apparent de préparation des avocats et étaient préoccupés depuis longtemps par le lanudiri nos ab saguj sattre sal ta amâm-iul Dans sa réponse, le juge A a indiqué que

qualité de la représentation juridique fournie par l'étude d'avocats des plaignants. Les plaignants ajoutaient que, peu après cette rencontre avec les juges, le directeur général de la SAE avait mis fin au contrat qu'il avait signé avec leur cabinet d'avocats aux fins de prestation de services juridiques. Les plaignants alléguaient que la conjuridiques. Les plaignants alléguaient que la conjurité des juges avait été la cause directe ou indirecte de la fin de leur contrat avec la SAE.

cabinet depuis 1993. « insultes gratuites » visant les avocats de leur ces juges témoignaient d'une tendance aux plaignants alléguaient que les commentaires de normes acceptées de conduite judiciaire. Les mais constituait une dérogation évidente aux influencer la SAE – n'était pas seulement déplacé, par le cabinet d'avocats - commentaires visant à sur la qualité des services juridiques dispensés ment des juges, qui avaient fait des commentaires ajoutaient qu'au cours de la réunion, le comportecabinet d'avocats à la SAE. Les plaignants des services professionnels dispensés par leur tées au tribunal et, directement ou indirectement, de la réunion était de discuter des causes présencabinet. Les plaignants alléguaient que l'objectif aucun des plaignants ni aucun membre de leur ticiper à une réunion en chambre sans prévenir avaient demandé à son directeur général de parles juges avaient appelé leur (ancien) client et Plus précisément, les plaignants alléguaient que

Les plaignants indiquaient qu'après avoir découvert qu'une telle réunion avait été organisée avec les juges en chambre, leur cabinet d'avocats avait présenté une motion au juge A requérant qu'il demande à ne pas entendre les causes en rapport avec la protection de l'enfance lorsque le cabinet d'avocats des plaignants agissait à titre de d'avocats des plaignants agissait à titre de

mandation du sous-comité des plaintes que là CMO. Le comité d'examen a souscrit à la recoml'affaire était hors du champ de compétence du dernier et que, sans preuve d'inconduite judiciaire, pouvait faire appel des décisions rendues par ce qu'il estimait que le juge avait des préjugés, il certaines décisions qu'il jugeait incorrectes ou d'avis que, si le plaignant n'était pas satisfait de condition. Le sous-comité des plaintes était séquence, il avait accordé une libération sous sa femme et de ses enfants et, qu'en conentraver sa capacité de subvenir aux besoins de ment ruiner la vie professionnelle du plaignant ni remarque. Le juge a noté qu'il ne voulait nulleall and the se souvenait pas avoir fait une telle et que, dans sa réponse, ce dernier avait indiqué aucun commentaire incorrect de la part du juge soit rejetée parce que la bande sonore ne révélait comité des plaintes a recommandé que la plainte plainte au juge et a examiné sa réponse. Le souset de la bande sonore des preuves, a soumis la ordonné et examiné une copie de la transcription assistée sociale ». Le sous-comité des plaintes a riche avocat qui veut transformer sa femme en

### EL 09-042/00 DOSSIEB NO 09-044/00

plainte soit rejetée.

Les plaignants étaient associés dans un cabinet d'avocats dont les services juridiques avaient été retenus par contrat par une société d'aide à l'enfance. Les plaignants alléguaient que deux juges (juges A et B) qui présidaient régulièrement les causes de droit de la famille lorsque des membres de leur cabinet d'avocats représentaient la SAE avaient demandé à se réunir avec le directeur général de la société d'aide à l'enfance et lui général de la société d'aide à l'enfance et lui avaient dit des choses déplacées concernant la avaient dit des choses déplacées concernant la avaient dit des choses déplacées concernant la avaient dit des choses déplacées concernant la

### **DOSSIEB NO 06-042/00**

soit rejetée. tion du sous-comité des plaintes que la plainte Le comité d'examen a souscrit à la recommandade la juge, qu'il n'y avait pas eu inconduite judiciaire. des plaintes était convaincu, suite à la réponse toutes les questions du plaignant, et le sous-comité car la réponse de la juge répondait pleinement à plaintes a recommandé que la plainte soit rejetée l'aurait traitée de cette façon. Le sous-comité des importance» et qu'elle ne pensait pas qu'elle regretté que la plaignante se soit sentie « sans plaintes a rapporté par ailleurs que la juge avait été refusée à l'une des parties. Le sous-comité des imaginer que la possibilité de se faire entendre ait par défaut et a déclaré qu'elle ne pouvait pas serait normalement la procédure dans une audience que, dans sa réponse, la juge avait décrit ce qui motion. Le sous-comité des plaintes a rapporté souvenir de cette motion ni des parties à la réponse. La juge a déclaré qu'elle n'avait pas soumis la plainte à la juge et a examiné sa pas importante ». Le sous-comité des plaintes a fait sentir que sa « présence [en cour] » n'était la juge ne l'avait pas écoutée et qu'elle lui avait injuste ». La plaignante alléguait par ailleurs que alléguait que la juge l'avait traitée « de façon la Cour des petites créances. La plaignante La plaignante était partie dans une affaire devant

### DOSSIER NO 06-043/00

Le plaignant était partie dans un conflit conjugal et était accusé de voies de fait et de méfait. Le plaignant alléguait que le juge en charge de l'instance avait des préjugés et avait pris des décisions incorrectes pendant toute l'instance. Le plaignant alléguait par ailleurs que, lors du prononcé de la sentence, le juge avait déclaré : « On a ici un sentence, le juge avait déclaré : « On a ici un

sous-comité des plaintes a recommandé que la plainte soit rejetée car elle ne comportait pas d'allégation d'inconduite judiciaire. Si la plaignante n'était pas satisfaite du jugement du tribunal, elle pouvait faire appel des décisions rendues et, sans preuve d'inconduite judiciaire, l'affaire était hors du champ de compétence du CMO. Le comité de d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

#### DOSSIER NO 06-041/00

plaintes que la plainte soit rejetée. souscrit à la recommandation du sous-comité des inconduite judiciaire. Le comité d'examen a base de la réponse du juge, qu'il n'y avait pas eu sous-comité des plaintes était convaincu, sur la toutes les questions posées par le plaignant, et le car la réponse du juge répondait pleinement à plaintes a recommandé que la plainte soit rejetée juge et a examiné sa réponse. Le sous-comité des sous-comité des plaintes a soumis la plainte au ancienne conjointe et avec [ses enfants] ». Le quer, par l'intermédiaire d'un avocat, avec [son] ment pour empêcher [le plaignant] de communiconseils juridiques et qu'il soit intervenu activepréparer les affidavits, qu'il lui ait donné des identité » et qu'il se pouvait qu'il « l'ait aidée à nom de jeune fille pour tenter de cacher son l'ancienne conjointe du plaignant] d'utiliser son ailleurs que le juge « avait peut-être conseillé là nant [leur] divorce ». Le plaignant alléguait par nant « eu égard aux questions juridiques concerconseillé et aidé l'ancienne conjointe du plaigplainte avait agi à titre d'ami de la famille et avait en Ontario » et alléguait que le juge visé par sa nager [leurs] enfants de Colombie-Britannique demande de son ancienne conjointe de « démé-Le plaignant avait comparu en cour suite à la

la procédure, elle peut demander à la Couronne d'appeler des décisions rendues et, sans preuve d'inconduite judiciaire, l'affaire est hors du champ de compétence du CMO. Le sous-comité des plaintes a rapporté que le juge avait nié sacheter des œuvres d'art à l'accusé et que l'engagement de ne pas troubler l'ordre public n'était pas arrangé à l'avance à cause du fait que le juge achetait des œuvres d'art à l'accusé ou par son intermédiaire. Le comité d'examen a souscrit à la intermédiaire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

#### DOSSIER NO 06-039/00

comité des plaintes que la plainte soit rejetée. men a souscrit à la recommandation du souscomme l'avait allégué le plaignant. Le comité d'exaque le juge « parlait fort, était grossier et raciste » du juge et que rien dans la bande sonore n'indiquait pas de preuve d'inconduite judiciaire de la part plainte soit rejetée, car il estimait qu'il n'y avait sous-comité des plaintes a recommandé que la une copie de la bande sonore des preuves. Le sous-comité des plaintes a ordonné et examiné le juge « parlait fort, était grossier et raciste ». Le preuve à son endroit. Le plaignant alléguait que « manque de justice » dont le juge avait fait écrit au Conseil de la magistrature concernant le motion à la Cour des petites créances et avait Le plaignant avait participé à une audience de

### DOSSIER NO 06-040/00

La plaignante était partie dans une affaire devant la Cour de la famille. La plaignante a écrit une longue lettre au Conseil de la magistrature décrivant en détail différentes ordonnances du juge dont elle n'était pas satisfaite et qui visaient juge dont elle n'était pas satisfaite et qui visaient juge dont elle coûts, les aliments et l'accès. Le

efforts du juge qui avait fait de son mieux pour le efforts du juge qui avait fait de son mieux pour le lui expliquer – et qu'il était possible que le juge ait parlé fort pour se faire entendre de la plaignante qui reconnaissait avoir de la difficulté à silleurs que la remarque du juge « Nous sommes ailleurs que la remarque du juge « Nous sommes ici au Canada » n'était pas dirigée contre l'ascendance irlandaise de la plaignante. Le comité dance irlandaise de la plaignante. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée parce que, sans preuve d'inconduite judiciaire, parce que, sans preuve d'inconduite judiciaire, l'affaire est hors du champ de compétence du CMO.

#### **DOSSIEK NO 06-038/00**

ou qu'elle estime qu'il y a des irrégularités dans nante n'est pas satisfaite du jugement du tribunal qu'il n'avait pas de rapports avec lui. Si la plaigétait un artiste qu'au moment de l'instance et vaincu que le juge n'avait appris que l'accusé mandé que la plainte soit rejetée car il était consa réponse. Le sous-comité des plaintes a recomdes preuves, soumis la plainte au juge et examiné ordonné et examiné une copie de la transcription d'avance ». Le sous-comité des plaintes a ne pas troubler l'ordre public avait été « arrangé le règlement de l'accusation par engagement de le juge achetait des œuvres d'art à l'accusé et que par ailleurs que des amis l'avaient informée que d'art à Paris, en France. La plaignante alléguait devait assister à une exposition de ses œuvres cusation en réponse à l'argument de l'accusé qu'il tre de sa propre conviction » et avait retiré l'acles minutes qui avaient suivi, était allé à l'encontrouvé l'accusé « coupable d'agression puis, dans injuste ». La plaignante alléguait que le juge avait [du procès] était parfaitement irrégulier et de violence familiale, alléguait que le « résultat La plaignante, qui était la victime dans une affaire

que la plainte soit rejetée. recommandation du sous-comité des plaintes du CMO. Le comité d'examen a souscrit à la aire, l'affaire était hors du champ de compétence du juge et que, sans preuve d'inconduite judiciqu'il n'y avait pas de preuve de préjugé de la part recommandé que la plainte soit rejetée car il estimait terme « frigging ». Le sous-comité des plaintes a indiquait qu'il ne se souvenait pas avoir utilisé le a rapporté par ailleurs que la réponse du juge évalué la cause. Le sous-comité des plaintes n'était pas satisfait de la façon dont le juge avait plainte et les réponses du juge, que le plaignant des plaintes a rapporté qu'il semblait, d'après la du bien-fondé de la cause à juger. Le sous-comité d'obtenir du juge qui la préside une évaluation raisons d'être d'une conférence préparatoire est sous-comité des plaintes a noté que l'une des la plainte au juge et a examiné sa réponse. Le

### **DOSSIEK NO 06-037/00**

car il estimait que la plaignante avait une perception plaintes a recommandé que la plainte soit rejetée la transcription des preuves. Le sous-comité des des plaintes a ordonné et examiné une copie de la plaignante qui est irlandaise. Le sous-comité tête, ce qui était une discrimination à l'égard de en brandissant le Code criminel au-dessus de sa crié très fort « Nous sommes ici au Canada » tout supposée. La plaignante ajoutait que le juge avait donnait la faveur aux victimes de l'agression plusieurs reprises, et elle alléguait que le juge qui était dure d'oreille, le lui ait demandé à haut pendant le procès bien que la plaignante, refusé de demander aux témoins de parler plus balai. La plaignante alléguait que le juge avait répondre à une accusation d'agression avec un représentée par un avocat, avait comparu pour La plaignante, une vieille dame qui n'était pas

prononcée, ne constituait pas une inconduite judiciaire en l'espèce. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### DOSSIER NO 06-035/00

sous-comité des plaintes que la plainte soit rejetée. d'examen a souscrit à la recommandation du patience et de justice en cette affaire. Le comité admonesté le plaignant, mais avait fait preuve de la transcription indiquait que le juge n'avait pas recommandé que la plainte soit rejetée parce que avait eu lieu. Le sous-comité des plaintes a d'équipement d'enregistrement là où l'audience n'existait pas de bande sonore car il n'y avait pas greffe a répondu au sous-comité des plaintes qu'il et demandé une bande sonore des preuves. Le ordonné et examiné une copie de la transcription seul mot ». Le sous-comité des plaintes a admonesté parce qu'[il] ne répondait pas par un « avait refusé d'écouter [ses] réponses et []'avait créances. Le plaignant alléguait que le juge propriétaire et de locataire à la Cour des petites avocat, était le demandeur dans une affaire de Le plaignant, qui n'était pas représenté par un

### **DOSSIEB NO 06-036/00**

Le plaignant était l'intimé dans une affaire devant la Cour des petites créances et était présent pour une conférence préparatoire à l'audience dans le cabinet du juge. Le plaignant alléguait que le juge « avait fait preuve de préjugés du début à la fin » de la conférence et n'avait jamais « regardé la défense » du plaignant. Le plaignant alléguait par ailleurs que le juge avait utilisé le mot « frigging » (mot grossier en anglais) pendant la conférence, ce qui avait laissé le plaignant « sidéré ». Le sous-comité des plaintes a soumis « sidéré ». Le sous-comité des plaintes a soumis

juge adjoint. Le comité d'examen a demandé au sous-comité des plaintes d'informer le plaignant qu'il s'était plaint d'un juge à l'égard duquel le Daintes a indiqué que le plaignant avait reconnu qu'il était possible qu'il n'ait pas parlé du bon juge et que, puisque lui-même et l'intimé étaient satisfaits du jugement de la cour, la raison pour laquelle faits du jugement de la cour, la raison pour laquelle ail avait déposé une plainte était « simplement pour aider d'autres personnes qui pourraient se retrouver aiden une situation similaire ».

#### DOSSIER NO 06-033/00

estimait que cette déclaration, si elle avait été recommandé que la plainte soit rejetée car il motifs d'objection. Le sous-comité des plaintes a tre de cette question et refusé de passer à d'autres mais que cette personne avait continué à débatvaise formule ne constituait pas une erreur fatale, avait dit à cette personne que l'emploi de la mauavait un caractère décisif. Le juge a ajouté qu'il sur le fait que l'utilisation de la mauvaise formule mais qu'il se rappelait que quelqu'un avait insisté de ce plaignant particulier ni du commentaire, le juge indiquait qu'il ne pouvait pas se souvenir comité des plaintes a noté que, dans sa réponse, plainte au juge et a examiné sa réponse. Le soustoilette ». Le sous-comité des plaintes a soumis la la motion pourrait être écrite sur du papier de le juge avait répondu que « en ce qui me concerne, les mauvaises formules. Le plaignant a ajouté que déposé la motion et l'affidavit de signification sur qu'il avait donnée au juge était que l'intimé avait motion. Le plaignant a dit que la première raison pourquoi il ne fallait pas poursuivre l'avis de plaignant déclarait que le juge lui avait demandé de motion à la Cour des petites créances. Le Le plaignant était le demandeur dans une audience

recommandation du sous-comité des plaintes que soient effacées. Le comité d'examen a souscrit à la demandé que certaines parties de la transcription la position du juge qui déclarait qu'il n'avait pas rejetée car le sténographe judiciaire avait confirmé des plaintes a recommandé que la plainte soit ministère du Procureur général). Le sous-comité judiciaire en cause ayant quitté son emploi au des sténographes judiciaires (l'autre sténographe nu'l àgorraint inamalaga a également interrogé l'un laquelle il niait les allégations du plaignant. Le la plainte au juge et a examiné sa réponse dans cabinet ». Le sous-comité des plaintes a soumis pieds, sauté de sa chaise et couru dans son cette question!», puis « qu'il avait battu des couleur et avait hurlé: « Vous pouvez répondre à plaignant a ajouté que le juge avait changé de à une question telle qu'elle était formulée ». Le avait dit au juge qu'il « ne pouvait pas répondre qu'au cours de l'interrogatoire contradictoire, il omis de la transcription. Le plaignant a expliqué cour et que cet excès de colère avait ensuite été ailleurs que le juge avait eu un excès de colère en scription de l'instance. Le plaignant alléguait par

#### DOSSIER NO 06-032/00

la plainte soit rejetée.

Le plaignant agissait à titre de représentant de l'intimé à la Cour des petites créances et allèguait que le juge devant lequel ils avaient comparu s'était montré condescendant, insensible et grossier pendant l'audience d'une motion. Le sous-comité des plaintes a soumis la plainte au juge et a examiné sa réponse. Le sous-comité des plaintes a recommandé que la plainte soit rejetée, le juge ayant indiqué qu'il n'avait pas entendu les motions le jour où le plaignant était en cour et que le juge devant lequel le plaignant avait comparu était un devant lequel le plaignant avait comparu était un devant lequel le plaignant avait comparu était un

### **DOSSIEK NO 06-029/00**

que la plainte soit rejetée. recommandation du sous-comité des plaintes du CMO. Le comité d'examen a souscrit à la duite judiciaire, hors du champ de compétence l'objet d'un appel et sont, sans preuve d'incontrouvé à cet égard, de telles erreurs peuvent faire le Conseil de la magistrature de l'Ontario n'a rien que, si le juge a commis des erreurs de droit, et Le sous-comité des plaintes a noté par ailleurs qu'il avait rendues relevaient de sa compétence. son pouvoir discrétionnaire et que les décisions judiciaire dans la façon dont le juge avait exercé qu'il estimait qu'il n'y avait pas eu inconduite recommandé que la plainte soit rejetée parce temps encore. Le sous-comité des plaintes a enfants à la garde de la Société pendant un certain l'avocate de la mère, et avait décidé de laisser les le juge avait entendu toutes les parties, y compris preuves. Le sous-comité des plaintes a noté que et examiné une copie de la transcription des parler ». Le sous-comité des plaintes a ordonné et le père avaient eu « beaucoup de temps pour plaignante notait que la Société d'aide à l'enfance n'avait pas eu une seule chance de s'exprimer. La alléguait par ailleurs que l'avocate de sa fille des enfants, de façon injuste. La plaignante alléguait que le juge avait traité sa fille, la mère la Société d'aide à l'enfance. La plaignante affaire de bien-être de l'enfance mettant en cause vatrice, était la grand-mère d'enfants mêlés à une La plaignante, qui était en cour à titre d'obser-

### **DOSSIEK NO 06-031/00**

Le plaignant était mêlé à un long procès devant la Cour des petites créances. Le plaignant alléguait que le juge avait ordonné au sténographe judiciaire de supprimer des portions de la tran-

sous-comité des plaintes que la plainte soit rejetée. comité d'examen a souscrit à la recommandation du hors du champ de compétence du CMO. Le appel et sont, sans preuve d'inconduite judiciaire, égard, de telles erreurs peuvent faire l'objet d'un magistrature de l'Ontario n'a rien trouvé à cet commis des erreurs de droit, et le Conseil de la sous-comité des plaintes a noté que, si le juge a plaignant était une personne de couleur. Le faits en l'espèce n'avait rien à voir avec le fait que le réponse complète et que sa constatation quant aux and juge constituait une serve du juge constituait une compétence. Le sous-comité des plaintes a les décisions qu'il avait rendues relevaient de sa sur la base de ce qu'il percevait être les faits, et que constater l'infidélité du plaignant envers sa femme avait exercé son pouvoir discrétionnaire pour pas eu inconduite judiciaire dans le fait que le juge plainte soit rejetée car il était d'avis qu'il n'y avait

#### **DOSSIEK NO 06-028/00**

sous-comité des plaintes que la plainte soit rejetée. d'examen a souscrit à la recommandation du décidait de fournir davantage de détails. Le comité réserve d'une réouverture du dossier si le client soit rejetée comme ayant été abandonnée, sous comité des plaintes a recommandé que la plainte magistrature est restée sans réponse et le souspoursuivre l'enquête. La lettre du Conseil de la sur les dates des comparutions en cour afin de écrit au plaignant pour lui demander des détails et humiliants ». Le sous-comité des plaintes a que le juge avait fait des « commentaires inutiles racistes en cour ». Le plaignant alléguait par ailleurs que le juge avait « un comportement et une attitude devant la Cour à la famille. Le plaignant alléguait Le plaignant était partie à une affaire continue

### **DOSSIEK NO 06-071/00**

des plaintes que la plainte soit rejetée. souscrit à la recommandation du sous-comité allégations du plaignant. Le comité d'examen a parce que la bande sonore n'appuyait aucune des plaintes a recommandé que la plainte soit rejetée une copie de la bande sonore. Le sous-comité des preuves fournie par le juge et ordonné et examiné examiné une copie de la transcription des pendant l'instance. Le sous-comité des plaintes a et il a nié avoir ri à quelque moment que ce soit dit que le bien-être de l'enfant était hors de propos sa réponse. Le juge a déclaré qu'il n'avait jamais plaintes a soumis la plainte au juge et a examiné l'enfant était hors de propos. Le sous-comité des dant l'instance et avait déclaré que le bien-être de alléguait que le juge avait ri à trois reprises penen cause la Société d'aide à l'enfance. Le plaignant dans une affaire de garde d'un enfant qui mettait pas représentés par un avocat, étaient les intimés Le plaignant et sa conjointe de fait, qui n'étaient

#### **DOSSIEK NO 06-022/00**

Le sous-comité des plaintes a recommandé que la soumis la plainte au juge et a examiné sa réponse. une copie de la transcription des preuves, a Le sous-comité des plaintes a ordonné et examiné capable de contrôler [ses] impulsions sexuelles ». de couleur et que l'on pensait [qu'il n'était] pas tion était fondée sur le fait [qu'il était] une personne à l'instance. Le plaignant ajoutait que « cette allégan'était appuyée par aucune des preuves présentées » déclarait que l'allégation d'adultère était « fausse et le plaignant avec commis l'adultère. Le plaignant détermination de la peine, le juge avait déclaré que Le plaignant alléguait que, lors de l'audience de menaces et de voies de fait à l'endroit de sa femme. comparu pour répondre à une accusation de Le plaignant, qui est un médecin de famille, avait

sous-comité des plaintes a noté par ailleurs que le juge avait déclaré que la fille de la plaignante avait depuis retiré sa demande d'annulation de l'accord de séparation. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

#### **DOSSIEK NO 06-020/00**

sous-comité des plaintes que la plainte soit rejetée. comité d'examen a souscrit à la recommandation du conduite judiciaire alléguée par le plaignant. Le sonore qui ne fournissait aucune preuve de l'inla réponse du juge était confirmée par la bande recommandé que la plainte soit rejetée parce que la bande sonore. Le sous-comité des plaintes a par le juge et ordonné et examiné une copie de une copie de la transcription des preuves fournie pas entendu. Le sous-comité des plaintes a examiné soit en présence du plaignant, le juge ne l'avait si le travailleur social avait chuchoté quoi que ce la Société d'aide à l'enfance. Le juge a ajouté que, fant en cause reste temporairement à la garde de la motion de mépris ou en ordonnant que l'enjuge a déclaré qu'il n'avait pas ricané en rejetant la plainte au juge et a examiné sa réponse. Le motion ». Le sous-comité des plaintes a soumis avait amené le juge à « ricaner et à rejeter la alléguait par ailleurs que « ce chuchotement » eût chuchoté quelque chose à l'oreille. Le plaignant rejeté sa motion après que le travailleur social lui du juge. Le plaignant alléguait que le juge avait travailleur social de la Société d'aide à l'enfance et de la Société d'aide à l'enfance. Il se plaignait du de garde temporaire et à une motion de mépris avocat, avait comparu en cour suite à une motion Le plaignant, qui n'était pas représenté par un

d'autre et que, là aussi, le contexte était important.

Le sous-comité des plaintes a recommandé que la plainte soit rejetée car il estimait que le comportement du juge lors de cette instance n'avait été ni inopportun ni mal avisé. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

#### DOSSIER NO 06-013/00

entente au lieu d'entamer des poursuites ». Le d'avocats, dans un effort pour parvenir à une insisté pour que les parties se parlent, avec l'aide réponse, le juge déclarait qu'il avait « beaucoup Le sous-comité des plaintes a noté que, dans sa comme l'avait demandé la fille de la plaignante. à annuler par motion un accord de séparation, que, de toutes façons, le juge n'était pas habilité que le dossier ne lui ait pas été soumis plus tôt et estimait que le juge n'était pas responsable du fait a recommandé que la plainte soit rejetée car il examiné sa réponse. Le sous-comité des plaintes des preuves, a soumis la plainte au juge et a une copie de la bande sonore et de la transcription Le sous-comité des plaintes a ordonné et examiné trop gros et qu'il n'avait pas le temps de le lire. » que le juge avait déclaré que « le dossier était d'avocats ». La plaignante alléguait par ailleurs entre eux et qu'ils n'avaient même pas besoin son ex-mari, qu'« ils devraient régler cette affaire dix minutes que le juge lui avait dit, ainsi qu'à ale sa fille n'était pas au tribunal depuis plus de avait eus de son ex-mari. La plaignante alléguait voulait la garde unique des deux enfants qu'elle séparation. La plaignante a déclaré que sa fille à une motion d'annulation d'un accord de La fille mariée de la plaignante était en cour suite

sance dans sa cause revenait à le harceler. Couronne ce qu'il estimait être une insuffile fait de faire remarquer au procureur de la Le juge a déclaré qu'il ne pensait pas que observer la faiblesse des preuves à cet égard. identifiable, et le juge avait simplement fait éprouvait de la haine à l'égard d'une minorité permettait de déduire que le possesseur montrer que la simple possession des articles identifiable ou par une preuve qui tendait à était de promouvoir la haine d'une minorité ou à un groupe de personnes dont l'objectif lie la possession des articles à une personne vaient être résolues que par une preuve qui -uod an servicions deux questions ne poulaquelle ils avaient été saisis. Comme noté pouvait en être fait contre la personne chez intimé contre les autres intimés et l'usage qui qui pouvait être fait des articles saisis chez un une question s'était posée concernant l'usage intimés. Il a indiqué que, lors de l'instance, 61 articles avaient été saisis chez les six deux jeunes contrevenants et qu'un total de noté que les accusés étaient quatre adultes et avec les preuves présentées. Le juge avait Couronne les difficultés auxquelles il se heurtait simplement fait remarquer au procureur de la matériel haineux, le juge a indiqué qu'il avait Couronne pour démontrer la pertinence du le juge avait harcelé le procureur de la 3) Eu égard à la troisième critique selon laquelle

4) Quant à la critique que le juge comparait quelqu'un qui faisait le « salut hitlérien » à quelqu'un qui faisait le signe « Hi », le juge a déclaré qu'il cherchait à faire remarquer au procureur de la Couronne que l'on pouvait interpréter de plus d'une façon le fait de lever la bras droit sans dire ni faire quoi que ce soit la bras droit sans dire ni faire quoi que ce soit

« salut hitlérien » et le geste de la main qui accompagne l'exclamation « Hi ».

Le juge a répondu à la plainte par l'intermédiaire d'un avocat et le sous-comité des plaintes a indiqué au comité d'examen que sa réponse fournissait une explication complète et plausible de son comportement lors de ce qui était sans aucun doute une instance émotionnellement chargée. Le sous-comité des plaintes a rapporté que le juge avait fourni les commentaires suivants sur les points auxquels il devait donner une réponse :

transcription des paroles d'un CD intitulé transcription des paroles d'un CD intitulé « Declaration of War » que l'enquêteur de la police à la barre avait été invité à lire à haute voix, et il était évident que cela le mettait mal à l'aise. Le juge a expliqué que, dans un effort pour réduire la tension au tribunal, il avait dit : « J'espérais que vous les chanteriez ». Il a également indiqué qu'il n'avait d'abord ni a également indiqué qu'il n'avait d'abord ni vu ni entendu les accusés rire de sa remarque nais que, dès qu'il s'en était rendu compte, il avait immédiatement mis fin au comportement inopportun par un regard sévère – une réponse qui n'a pas été enregistrée parce réponse qui n'a pas été enregistrée parce qu'èlle était silencieuse.

2) Eu égard à la seconde critique, le juge a indiqué qu'il avait fait observer que CJC pouvait représenter bien des choses, y compris le « Canadian Judicial Council », bien qu'il ait été d'accord avec le procureur de la Couronne que l'acronyme CJC devait être remis dans son contexte et que, de toute évidence, dans la présente instance, il désignait le « Canadian Jewish Congress » (Congrès juif canadien), ce qui a été confirmé par la transcription.

était sévère et directe mais qu'elle n'estimait pas que son comportement « sortait de l'ordinaire ». Le sous-comité des plaintes a recommandé que la plainte soit rejetée car il était satisfait de la réponse et des excuses de la juge ainsi que des observations du témoin interrogé. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée. Le CMO a communiqué que la plainte soit rejetée. Le CMO a communiqué par lettre les excuses de la juge au plaignant.

#### **DOSSIEK NO 06-011/00**

jeu; et 4) l'équation faite par le juge entre le matériel haineux par rapport aux questions en Couronne pour démontrer la pertinence du que le juge avait harcelé le procureur de la du Conseil canadien de la magistrature); 3) le fait aient « Canadian Judicial Council » (nom anglais que les initiales « CJC » sensitini es que les initiales » capacitation de la company que qu'il avait saite; 2) l'interprétation du juge accusés lorsqu'ils s'étaient moqués d'une remar-2) le fait que le juge n'avait pas réprimandé les répondre aux critiques suivantes du journaliste: scription de l'instance et a demandé au juge de plaintes a examiné l'article de journal et la tranattribuées par le journaliste. Le sous-comité des « remarques inopportunes » qui lui étaient contre le juge de première instance sur la base des transcription de l'instance, a déposé une plainte Le plaignant, qui admettait ne pas avoir lu la de promouvoir intentionnellement la haine. « skinheads nazis » qui avaient été accusés Le journaliste avait décrit l'acquittement de six publié dans un quotidien à grand tirage. attribué à un juge par un journaliste dans un article le comportement « inopportun et mal avisé » et de défense des droits civils pour protester contre à titre de président d'un organisme d'éducation Le plaignant a écrit au Conseil de la magistrature

### **DOSSIEK NO 06-009/00**

Le plaignant, qui n'était pas représenté par un

a interrogé la stagiaire qui a indiqué que la juge remplacer ce jour-là. Le sous-comité des plaintes qui lui a répondu qu'il avait envoyé sa stagiaire le des plaintes a pris contact avec l'avocat adverse s'était exprimé avec tant de force. Le sous-comité elle aimerait s'excuser auprès du plaignant, qui damment des observations de l'avocat adverse, pourrait [l'] aider ». La juge notait que, indépenadverse qui était « présent au tribunal et qui sous-comité des plaintes de consulter l'avocat autorité. Dans sa réponse, la juge a demandé au qu'elle avait jugé nécessaire d'user de son nant l'avait défiée « de façon très agressive » et -gialq əl əup əupibni itaya əgul al əup ərroqqar a examiné sa réponse. Le sous-comité des plaintes des plaintes a soumis la plainte à la juge et a qu'il n'existait pas de transcription. Le sous-comité petites créances sont rarement enregistrées et informé par le greffe que les motions à la Cour des et de la bande sonore des preuves et il a été plaintes a demandé une copie de la transcription les services d'un avocat ». Le sous-comité des devait « poursuivre cette affaire, il devrait retenir portement de la juge l'avait convaincu que, s'il d'explication ». Le plaignant ajoutait que le comson hostilité, personne n'avait osé lui demander de sa décision et que, du fait de sa colère et de que la juge « n'avait pas voulu expliquer le motif de la cause ». Le plaignant alléguait par ailleurs aptitude à écouter et à juger tous les faits pertinents humiliant » et il alléguait que cela « entravait son portement de la juge qu'il estimait « agressif et plaignant exprimait sa déception devant le comréglée « à la satisfaction des deux parties ». Le que l'affaire entre lui-même et l'intimé avait été Cour des petites créances. Le plaignant indiquait avocat, était le demandeur dans une audience de

a recommandé que la plainte soit rejetée car, bien que la bande sonore ait indiqué un certain degré de brusquerie et d'impatience de la part du juge, ce qui était probablement à l'origine de la plainte, ce n'était pas un comportement qui, à son avis, constituait une inconduite judiciaire. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### **DOSSIEK NO 06-002/00**

plaintes que la plainte soit rejetée. souscrit à la recommandation du comité des une inconduite judiciaire. Le comité d'examen a ment regrettable mais n'estimait pas qu'il constituait mentaires inopportuns. Il jugeait ce comportecertaines occasions, le juge avait fait des complaintes a noté que la transcription révélait qu'à compétence du CMO. Le sous-comité des duite judiciaire, l'affaire était hors du champ de pouvait faire appel et que, sans preuve d'incony avait eu des irrégularités dans la procédure, elle satisfaite du jugement de la cour ou estimait qu'il soit rejetée parce que, si la plaignante n'était pas comité des plaintes a recommandé que la plainte plainte au juge et a examiné sa réponse. Le souscopie de la transcription des preuves, a soumis la comité des plaintes a ordonné et examiné une de « dire un seul mot à [leur] défense ». Le souselle, la plaignante, ni à sa fille, ni à leur avocate par ailleurs que le juge ne leur avait permis ni à droit à [se] défendre ». La plaignante alléguait respect ni pour la Constitution ni pour [son] nante alléguait que le juge n'avait « aucun garde légale concernant sa petite-fille. La plaig-La plaignante était en cour pour une affaire de

sous-comité des plaintes que la plainte soit rejetée. comité d'examen a souscrit à la recommandation du que, de toute évidence, il y avait eu désaccord. Le soulevée lors de la conférence préparatoire, mais malade ni pourquoi cette question avait été texte il avait pu être question que l'enfant ait été qu'elle ne pouvait pas se souvenir dans quel conde maladie de l'enfant. La juge a noté par ailleurs est habituellement temporairement annulé en cas entre les parties concernant l'accès à un enfant que la pratique courante est que tout accord mère et qu'elle avait indiqué, dans sa réponse, enfant malade devrait seulement être chez sa catégoriquement nié avoir déclaré qu'une ou un sous-comité des plaintes a noté que la juge avait toutes les questions concernant la plainte. Le car il était satisfait de la réponse de la juge à plaintes a recommandé que la plainte soit rejetée et a examiné sa réponse. Le sous-comité des comité des plaintes a soumis la plainte à la juge préparatoire n'ayant pas été enregistrée), le souscurer de transcription des preuves (l'audience

#### DOSSIER NO 02-078/66

Le plaignant a déclaré que sa femme avait gagné un procès intenté à la suite d'un accident de la circulation et qu'il l'avait accompagnée à la Cour des petites créances, avec un ami de la famille, un ancien avocat, qui avait accepté de la représenter. Le plaignant a déclaré que « ayant pris place dans l'auditoire, il n'en avait pas cru ses oreilles ». Le plaignant alléguait que le juge président avait été wintimidant, agressif et tout simplement grossier non seulement à l'égard de [la] la femme [du plaignant] mais aussi envers son agent ». Le sous-comité des plaintes a ordonné et examiné une copie de la transcription et de la bande sons copie de la transcription et de la bande sonore de l'instance. Le sous-comité des plaintes

l'enquête si elle déclarait l'agression alléguée. les autorités policières pourraient poursuivre classé et la plaignante a été notifiée par lettre que des plaintes a recommandé que le dossier soit compétence à l'égard de la plainte. Le sous-comité depuis pris sa retraite et que le CMO n'avait plus par ailleurs que le juge visé par la plainte avait réponse. Le sous-comité des plaintes a indiqué plaignante à deux autres reprises sans recevoir de de réponse à cette lettre et qu'il avait écrit à la des plaintes a rapporté qu'il n'avait pas reçu que le CMO divulgue son nom. Le sous-comité quête, mais seulement si la plaignante acceptait le ministère du Procureur général aux fins d'enla plainte, l'affaire pourrait être portée devant de justice et que, pour poursuivre cet aspect de une conduite criminelle de la part d'un officier qu'elles représenteraient, si elles étaient prouvées, pour l'informer que ses allégations étaient telles des plaintes a de nouveau écrit à la plaignante pas accepté ses avances sexuelles ». Le sous-comité et qu'elle « le craignait » parce qu'elle « n'avait était « un juge et donc un personnage important »

#### DOSSIER NO 02-072/66

Le plaignant a écrit au Conseil de la magistrature au sujet d'une juge qui participait à une conférence préparatoire à l'instruction dans une audience concernant la garde d'une enfant. Le plaignant alléguait que la juge « ne semblait pas vraiment prête à entendre les deux aspects de la cause mais semblait au contraire avoir des préjugés contre moi [le plaignant] parce que je suis un père et non une mère. » Le plaignant alléguait par ailleurs que la juge avait fait des « déclarations ailleurs que la juge avait fait des « déclarations tendancieuses » et avait dit qu'« un enfant malade devrait être avec sa mère et non chez son père ». Comme il n'était pas possible de se propère ». Comme il n'était pas possible de se propère ».

### DOSSIER NO 02-017/99

des plaintes que la plainte soit rejetée. a souscrit à la recommandation du sous-comité pas une inconduite judiciaire. Le comité d'examen était regrettable, ce comportement ne représentait avait exprimé à l'occasion son irritation, ce qui indiqué qu'il était convaincu que, même si la juge plainte soit rejetée. Le sous-comité des plaintes a Le sous-comité des plaintes a recommandé que la des instances qui ont eu lieu ce jour-là au tribunal. une copie de la transcription et la bande sonore sous-comité des plaintes a ordonné et examiné le monde avec un manque de respect total ». Le alléguait par ailleurs que la juge avait « traité tout « grossière » et « argumentative ». Le plaignant qui présidait l'instance s'était comportée de façon petites créances. Le plaignant alléguait que la juge Le plaignant était un observateur à la Cour des

### **DOSSIEK NO 02-071/66**

parce qu'elle connaissait la situation du juge qui déposé d'accusation de harcèlement sexuel» sous-comité des plaintes « qu'elle n'avait pas été signalée à la police. La plaignante a informé le demander si l'allégation d'agression sexuelle avait des plaintes a écrit à la plaignante pour lui étaient complètement fausses. Le sous-comité avait déclaré que les allégations de la plaignante avant l'instance devant la Cour de la famille et qu'il avec la plaignante qu'il n'avait jamais rencontrée que le juge avait absolument nié tout contact réponse. Le sous-comité des plaintes a rapporté se saminé sa la sujuge et a examiné sa importunes. Le sous-comité des plaintes a président et qu'elle avait refusé ses avances sexuelles bien-être de l'enfance, elle avait rencontré le juge d'avoir comparu en cour pour une affaire de Le plaignant alléguait qu'environ deux ans avant

### DOSSIER NO 05-013/99

que la plainte soit rejetée. à la recommandation du sous-comité des plaintes pétence du CMO. Le comité d'examen a souscrit d'inconduite judiciaire, hors du champ de comfaire l'objet d'un appel et sont, sans preuve n'a rien trouvé à cet égard, de telles erreurs peuvent droit, et le Conseil de la magistrature de l'Ontario compétence. Si le juge a commis des erreurs de les décisions qu'il avait rendues relevaient de sa avait exercé son pouvoir discrétionnaire et que d'inconduite judiciaire dans la façon dont le juge ailleurs qu'à son avis, il n'y avait pas de preuve plaignant. Le sous-comité des plaintes a conclu par preuve à l'appui des allégations de préjugé du soit rejetée car il estimait qu'il n'y avait pas de comité des plaintes a recommandé que la plainte les tribunaux et n'a pas reçu de réponse. Le sousnant eu égard à la situation des accusations devant demandé davantage de renseignements au plaigstance. Le sous-comité des plaintes a également examiné une copie de la bande sonore de l'incause. Le sous-comité des plaintes a ordonné et préjugés contre lui et refusait de se retirer de sa avait déni de justice parce que le juge avait des avait été rejetée. Le plaignant alléguait qu'il y l'un des juges visés par sa plainte et sa demande Le plaignant avait demandé un ajournement à tions et que cela avait « contaminé » la preuve. et les témoins à l'occasion des différentes accusaprocureurs de la Couronne, les agents de police qu'il y avait eu « chevauchement » entre les certaines des accusations. Le plaignant alléguait deux juges différents dont chacun avait entendu différentes occasions et il avait comparu devant accusations avaient été déposées contre lui à cusation de menaces et de méfait public. Les Le plaignant faisait l'objet de plusieurs chefs d'ac-

# RÉSUMÉS DES DOSSIERS

plaintes est revenu devant le comité d'examen pour rapporter que l'enquêteur privé n'avait pas trouvé de fondement aux allégations du plaignant et pour recommander de nouveau que la plainte soit rejetée comme étant sans fondement et au motif qu'il n'y avait pas eu inconduite judiciaire de la part du juge et que le juge n'était pas dans une situation de conflit avec le plaignant ni n'avait de préjugé à son endroit. Le comité d'examen a souscrit à la recommandation du sous-comité des plaintes que la plainte soit rejetée.

### DOSSIER NO 05-012/99

comité des plaintes que la plainte soit rejetée. men a souscrit à la recommandation du souschamp de compétence du CMO. Le comité d'exasans preuve d'inconduite judiciaire, hors du erreurs peuvent faire l'objet d'un appel et sont, de l'Ontario n'a rien trouvé à cet égard, de telles erreurs de droit, et le Conseil de la magistrature plaintes a noté que, si le juge a commis des ses décisions en l'espèce. Le sous-comité des judiciaire dans la façon dont le juge avait rendu estimait qu'il n'y avait pas de preuve d'inconduite et a recommandé que la plainte soit rejetée car il plaintes a examiné la transcription de l'audience relative à l'alibi du plaignant. Le sous-comité des un témoin de ne pas répondre à une question l'interrogatoire contradictoire et avait conseillé à avait limité le temps accordé à la défense pour Le plaignant alléguait par ailleurs que le juge demande de règlement des points en litige. sans rendre de décision en réponse à une que le juge avait ordonné que l'instance se poursuive profération de menaces. Le plaignant alléguait chels d'accusation, notamment méfait public et avocat, avait comparu pour répondre de trois Le plaignant, qui n'était pas représenté par un

#### DOSSIER NO 02-004/66

interroger l'agent de police. Le sous-comité des retenu les services d'un enquêteur privé pour demande du juge. Le sous-comité des plaintes a al a no sviitiatiini siqorq es sh inatiliative ou à la la plainte et si l'agent de police avait ou non parlé si le juge avait ou non parlé à l'agent de police de demandé au sous-comité des plaintes de vérifier cepter de rejeter la plainte, le comité d'examen a de procès devant un juge différent. Avant d'acjuge s'était récusé et avait fixé une nouvelle date duite judiciaire de la part du juge, et parce que le rejetée, car il estimait qu'il n'y avait pas eu incondes plaintes a recommandé que la plainte soit des preuves fournie par le plaignant. Le sous-comité plaintes a examiné une copie de la transcription crainte de partialité». Le sous-comité des agent de police et [que] cela doit créer une tifiable qu'un juge dise ce genre de chose à un plaignant déclarait que « à [son] avis, il est injus-Conseil de la magistrature d'une plainte ». Le était « plutôt embêté que [le plaignant] saisisse le avait « fait savoir » à l'agent de police que le juge présenté chez lui pour le prévenir que le juge agent de la Police provinciale de l'Ontario s'était justice ». Le plaignant alléguait par ailleurs qu'un sous pression, ne donnait pas une impression de estimait que le fait de « ne pas l'admettre, même et connaître [le destinataire] », et le plaignant tion criminelle « devait être au courant du conflit alléguait que le juge chargé d'entendre l'accusaet [le plaignant] ne s'aimaient pas ». Le plaignant « bien connu dans la collectivité que [le destinataire] dans le cadre de cette instance civile et qu'il était et déclarait qu'il y avait « beaucoup de conflits » l'opposait au destinataire des menaces alléguées était partie dans une instance civile continue qui accusation d'avoir proféré des menaces. Le plaignant Le plaignant avait comparu pour répondre à une

livré à une activité abusive ou illégale (par exemple, manipuler des dossiers de la cour), des allégations d'inconduite du juge en cour, comme une attitude grossière ou agressive, etc., ou sur des allégations que la décision d'un juge était le résultat d'un présumé manque d'impartialité ou d'un présumé conflit d'intérêt ou parti pris.

Sur les 6 dossiers de plaintes restants qui ont été classés durant la période couverte par le présent rapport, dans deux cas, il a été décidé que le CMO n'avait pas compétence sur les juges visés par la plainte (dossiers nos 05-021/99 et 06-032/00), deux plaintes ont été abandonnées par les plaignants (dossiers nos 06-028/ 00 et 07-002/01) et deux dossiers ont été renvoyés à une audience (dossiers nos 04-017/98 et 05-030/99).

En instance à la fin de l'exercice	17	1+	ΙS	<del>+</del> 9	15	6 <del>†</del>	88
Classés durant l'exercice	5.5	ΙS	95	+9	99	63	59
Total des dossiers ouverts durant l'exercice	<b>₽</b> \$	76	201	128	123	711	101
Reportés de l'exercice précédent	.O.2	17	Ι+	15	<del>+</del> 9	15	6+
Ouverts durant Pexercice	<b>₽</b> \$	17	99	11	65	22	75
ANNÉE D'ACTIVITÉS:	96-56	46-96	86-76	66-86	00-66	10-00	70-10

Chaque numéro de dossier est constitué d'un préfixe de deux chiffres indiquant l'année d'activités du Conseil au cours de laquelle il a été ouvert. Ce préfixe est suivi d'un nombre de dossier séquentiel de trois chiffres et d'un nombre de dossier a été ouvert (par exemple, le dossier no 06-055/01 était le 55e dossier ouvert au cours de la sixième année d'activités, et il a été ouvert au cours de l'année civile 2001).

# 10. Résumés des dossiers

Dans tous les dossiers classés durant l'année, l'avis de la décision du Conseil de la magistrature, motifs à l'appui, a été remis au plaignant et au juge visé, conformément aux instructions du juge sur l'avis (se reporter à l'annexe B du Guide des procédures du CMO).

On trouvera ci-après une description détaillée de chaque plainte. Les renseignements signalétiques ont été supprimés.

# 9. Résumé des plaintes

Au cours de sa septième année d'activités, le Conseil de la magistrature de l'Ontario a reçu 52 plaintes, en plus des 49 dossiers de plaintes reportés des années précédentes. Sur ces 101 plaintes, 63 ont été réglées avant le 31 mars 2002, ce qui laisse 38 dossiers de plaintes qui seront reportés à la huitième année d'activités.

Dans tous les cas, une enquête a été menée. Le souscomité des plaintes a examiné la lettre du plaignant et, au besoin, la transcription ou la bande sonore de l'instance judiciaire pour rendre une décision concernant la plainte. Dans certains cas justifiés, une enquête plus poussée a été menée. Dans tous les cas, les quatre membres de chaque comité d'examen ont approuvé la décision relative à la plainte, telle que recommandée par le sous-comité des plaintes, après avoir examiné le dossier de la plainte et les résultats de l'enquête.

Le Conseil de la magistrature a rejeté 57 des 63 dossiers de plaintes qu'il a classés au cours de la période couverte par le présent rapport.

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Vingt-deux (22) des 57 dossiers de plaintes rejetés par le Conseil de la magistrature de l'Ontario se sont révélés sans fondement après enquête. Ces 22 dossiers de plaintes présentaient des allégations qu'un juge avait instruit une cause de manière irrégulière ou qu'il s'était

 ordonner que le juge prenne des dispositions on précises, par exemple, suivre une formation ou un traitement, pour pouvoir continuer de siéger à titre de juge;

 suspendre le juge, avec rémunération, pour une période indéterminée;

 suspendre le juge, sans rémunération, mais avec avantages sociaux, pendant une période maximale de trente jours.

(Remarque : le Conseil peut imposer toute combinaison des sanctions énoncées ci-dessus.)

 recommander au procureur général la destitution du juge.

(Remarque : cette dernière sanction ne peut être combinée

(צברות מולעות: בברב עבר וונדר במותב במות בברב במות בברב

Le comité d'examen ou un comité d'audience peut, lorsqu'une audience est tenue relativement à une plainte, examiner la question de l'indemnisation du juge pour les frais qu'il a engagés au titre des services juridiques nécessaires à une enquête ou à une audience. Le Conseil peut ordonner l'indemnisation du juge pour le coût de ces services juridiques (en se fondant sur un tarif qui ne dépasse pas le taux maximal normalement payé par le gouvernement de l'Ontario pour des services similaires) et le procureur général doit verser l'indemnité au juge et le procureur général doit verser l'indemnité au juge conformément à la recommandation.

On trouvera à l'Annexe D du présent rapport une copie des dispositions législatives de la Loi sur les tribunaux judiciaires concernant le Conseil de la magistrature de l'Ontario.

Des dispositions relatives à la nomination de membres temporaires ont été prises pour veiller à ce qu'une majorité des membres du Conseil puissent tenir une audience sur une plainte si une telle audience a été ordonnée. Les comités d'audience doivent être composés d'au moins deux des six autres membres du Conseil qui n'ont pas participé au processus jusqu'à cette étape. Au moins un membre du comité d'audience doit être non juriste, et le juge en chef de la Cour de justice de juriste, et le juge en chef de la Cour de justice de l'Ontario, ou son suppléant de la Cour d'appel, doit présider le comité d'audience.

Les audiences tenues relativement à des plaintes sont publiques à moins que le Conseil ne détermine, conformément aux critères établis en vertu de l'alinéa 51.1(1) de la Loi sur les tribunaux judiciaires, que des circonstances exceptionnelles existent et que les avantages du maintien du caractère confidentiel prévalent sur ceux de la tenue d'une audience publique, auquel cas le Conseil peut tenir une partie ou la totalité de l'audience à huis clos.

Il n'est pas obligatoire que les instances autres que les audiences tenues pour examiner les plaintes portées contre certains juges soient publiques. L'identité d'un juge, après une audience à huis clos, n'est divulguée que dans des circonstances exceptionnelles déterminées par le Conseil. Dans certaines circonstances, le Conseil est aussi habilité à interdire la publication d'informations susceptibles de divulguer l'identité d'un plaignant ou d'un juge. La Loi sur l'exercice des compétences légales, sauf certaines exceptions, s'applique aux audiences tenues relativement ,à des s'applique aux audiences tenues relativement ,à des plaintes.

Après la tenue d'une audience, le comité d'audience du Conseil peut rejeter la plainte (qu'il ait conclu ou non que la plainte n'est pas fondée) ou, s'il conclut qu'il y a eu inconduite de la part d'un juge, il peut imposer une ou plusieurs sanctions, ou recommander au procureur général la destitution du juge.

Le Conseil de la magistrature peut imposer les sanctions suivantes pour inconduite :

- donner un avertissement au juge;
- réprimander le juge;
- plaignant ou à toute autre personne;

Une fois l'enquête terminée, le sous-comité des plaintes peut recommander le rejet de la plainte, son renvoi devant le juge en chef de la Cour de justice de l'Ontario pour un règlement à l'amiable, son renvoi à la médiation ou encore sa présentation au Conseil de la magistrature avec ou sans recommandation de tenir une audience. La décision du sous-comité des plaintes doit être unanime. Si les membres du sous-comité des plaintes ne peuvent pas se mettre d'accord, le sous-comité des plaintes ne peuvent la plainte au Conseil qui décide des mesures à prendre. la plainte au Conseil qui décide des mesures à prendre.

Le conseil peut établir un mécanisme de médiation, et seules les plaintes qui s'y prêtent (compte tenu de la nature des allégations) sont renvoyées à la médiation. Le Conseil doit élaborer des critères pour déterminer quelles plaintes peuvent être renvoyées à la médiation.

qui fait l'objet de la plainte. plaintes connaissent l'identité du plaignant ou du juge procédure, seuls les deux membres du sous-comité des avocat et d'un membre non juriste. A cette étape de la le juge en chet de la Cour de justice de l'Ontario), d'un sont composés de deux juges provinciaux (autres que d'une audience relative à la plainte. Les comités d'examen de l'Ontario ou à un médiateur, ou ordonner la tenue plainte, la renvoyer au juge en chet de la Cour de justice comité d'examen établi par celui-ci) peut rejeter la plaintes renvoie une plainte au Conseil, celui-ci (ou un que la décision n'est pas appropriée. Si le sous-comité des des plaintes si le Conseil (ou le comité d'examen) décide la solution ou remplacer toute décision du sous-comité échéant) par le sous-comité des plaintes et peut approuver examine la solution recommandée à une plainte (le cas Le Conseil (ou un comité d'examen établi par celui-ci)

Les membres du sous-comité des plaintes qui ont participé à la sélection préalable de la plainte ne participent pas à son examen par le Conseil ni à aucune audience subséquente portant sur cette plainte. De la même façon, les membres du comité d'examen qui ont participé à l'examen d'une plainte ou à son renvoi ne participent pas à amen d'une plainte ou à son renvoi ne participent pas à l'audition de la plainte, au cas où une audience est ordonnée.

À la fin du processus d'enquête et d'examen, toutes les décisions relatives aux plaintes soumises au Conseil de la magistrature auront été examinées par un total de six membres du Conseil : deux membres du sous-comité des plaintes et quatre membres du comité d'examen.

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# 9. Résumé des plaintes

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מאפכ מחכחשה מחגרה.)

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On trouvera à l'Annexe D du présent rapport une copie des dispositions législatives de la Loi sur les tribunaux judiciaires concernant le Conseil de la magistrature de l'Ontario.

Le paragraphe 49(3) de la Loi sur les tribunaux judiciaires autorise le juge en chef de la Cour de justice de l'Ontario à nommer un juge provincial à titre de membre temporaire du Conseil de la magistrature de l'Ontario pour satisfaire aux exigences législatives en matière de quorum pour les réunions, les comités d'examen et les comités d'audience du Conseil de la magistrature. Le juge suivant de la Cour de justice de l'Ontario a été nommé par le juge en chef pour servir au besoin de membre temporaire du Conseil de la magistrature de l'Ontario:

# 3. Renseignements administratifs

Des locaux séparés adjacents au bureau du juge en chef, au centre-ville de Toronto, sont utilisés à la fois par le Conseil de la magistrature de l'Ontario et par le Conseil d'évaluation des juges de paix. La proximité entre le bureau du Conseil et celui du juge en chef permet à ces deux conseils de partager, selon les besoins, le personnel de bureau et d'administration ainsi que les services informatiques et de soutien, sans avoir à se doter d'un personnel de soutien d'envergure.

Les locaux des conseils servent principalement aux réunions des deux conseils et de leurs membres. Chaque conseil a ses propres numéros de téléphone et de télécopieur et ses propres articles de papeterie. Par ailleurs, chaque conseil a un numéro sans frais réservé à l'usage du public à l'échelle de l'Ontario et un numéro sans frais à l'intention des personnes qui se servent de téléscripteurs.

Au cours de la septième année d'activités du Conseil, le personnel du Conseil de la magistrature de l'Ontario et du Conseil d'évaluation des juges de paix était composé d'une greffière, d'un greffier adjoint à temps partiel et d'une secrétaire:

VALERIE P. SHARP, LL.B. Greffière adjointe (Jusqu'au 2 octobre 2001)

JANICE CHEONG

Secrétaire

Edward L. Greenspan, c.r. (Jusqu'au 25 septembre 2001) (Toronto)
Patricia D.S. Jackson
(à compter du 28 septembre 2001) .......(Toronto)
Membres de la collectivité:

AVOCAT DĚSIGNĚ PAR LE BARREAU

WILLIAM JAMES
Président, Inmet Mining Corporation

Président et directeur général, Muskoka Transport Ltd.

HENRY WETELAINEN

Ontario Metis Aboriginal Association

Un poste de membre de la collectivité – vacant

– (à compter du 28 février 2001)

# Membres temporaires

DU HAUT-CANADA

Les articles 87 et 87.1 de la Loi sur les tribunaux judiciaires habilitent le Conseil de la magistrature de l'Ontario à statuer sur les plaintes portées contre toute personne qui était protonotaire de la Cour suprême avant le 1er septembre 1990 et contre tout juge provincial qui était affecté à la Cour provinciale (Division civile) avant le 1er septembre 1990. Lorsque le Conseil de la magistrature de taire ou un juge de l'ancienne Division civile, le juge qui taire ou un juge de l'ancienne Division civile, le juge qui de la Cour supérieure de plaintes est remplacé par un membre temporaire nommé par le juge en chef de la de la Cour supérieure de justice. Il peut s'agir, selon le cas, d'un protonotaire ou d'un juge provincial qui siège à la Cour des petites créances.

Durant la période couverte par le présent rapport, les personnes suivantes ont été nommées membres temporaires du Conseil de la magistrature de l'Ontario pour traiter les plaintes portées contre ces juges et protonotaires nommés par l'autorité provinciale:

PROTONOTAIRES JUGES

Basil T. Clark, c.r. Monsieur le juge M. D. Godfrey R. B. Linton, c.r. Madame la juge Pamela Thomson

# 2. Membres titulaires

Durant sa septième année d'activités (soit du ler avril 2001 au 31 mars 2002), le Conseil de la magistrature de l'Ontario était composé des membres suivants :

# Membres de la magistrature Juge en chef de l'ontario

JUGE PRINCIPAL RÉGIONAL

R. Roy McMurtry .....(Toronto)

DE L'ONTARIO

JUGE EN CHEF DE LA COUR DE JUSTICE

DE L'ONTARIO JUGE EN CHEF ADJOINT DE LA COUR DE JUSTICE

David Wake .....(Toronto)

Donald A. Ebbs (jusqu'au 31 août 2001).....(London)

Raymond P. Taillon
(Lindscaper du 3.1 pourambre 2001)

(à compter du 21 novembre 2001).....(Lindsay)

TY CONK DE JUSTICE DE L'ONTARIO DEUX JUGES NOMMÉS PAR LE JUGE EN CHEF DE

Madame la juge Lynn King (Jusqu'au 28 septembre 2001)

Monsieur le juge Alexander M. Graham (jusqu'au 1er septembre 2001).....(Woodstock)

Madame la juge Marjoh Agro (à compter du 29 septembre 2001).....(Milton)

Madame la juge Deborah Livingstone

(à compler du 2 septembre 2001).....(London)

# TRÉSORIER DU BARREAU DU HAUT-CANADA

Robert P. Armstrong, c.r. (jusqu'au 21 juin 2001).........(Toronto)

(à compter du 22 juin 2001).....(Toronto)

# BARREAU DU HAUT-CANADA

Julian Porter, c.r. (à compter du 28 septembre 2001).....(Toronto)

# 1. Composition et modalités de nomination

Le Conseil de la magistrature de l'Ontario est constitué des membres suivants :

- le juge en chef de l'Ontario (ou un autre juge de la Cour d'appel désigné par le juge en chef);
- le juge en chef de la Cour de justice de l'Ontario (ou un autre juge de cette cour désigné par le juge en chef);
- le juge en chef adjoint de la Cour de justice de l'Ontario;
- un juge principal régional de la Cour de justice de l'Ontario nommé par le lieutenantgouverneur en conseil sur la recommandation du procureur général;
- deux juges de la Cour de justice de l'Ontario nommés par le juge en chef de cette cour;
- le trésorier du Barreau du Haut-Canada ou un autre conseiller du Barreau qui est avocat, désigné par le trésorier;
- un avocat qui n'est pas conseiller du Barreau;
   du Haut-Canada, nommé par le Barreau;
- quarre personnes qui ne sont ni juges ni avocats, nommées par le lieutenant-gouverneur en conseil sur la recommandation du procureur général.

Le juge en chef de l'Ontario préside toutes les instances concernant des plaintes portées contre des juges particuliers, sauf les réunions du comité d'examen qui sont présidées par un juge provincial désigné par le Conseil de la magistrature. Le juge en chef de l'Ontario préside aussi les réunions tenues pour examiner les demandes relatives aux besoins d'un juge en taison d'une invalidité ou pour examiner le maintien en fonction d'un juge en chef ou d'un juge en chef adjoint. Le juge en chef de la Cour de d'un juge en chef adjoint. Le juge en chef de la Cour de justice de l'Ontario préside toutes les autres réunions du justice de l'Ontario préside toutes les autres réunions du

Conseil de la magistrature.

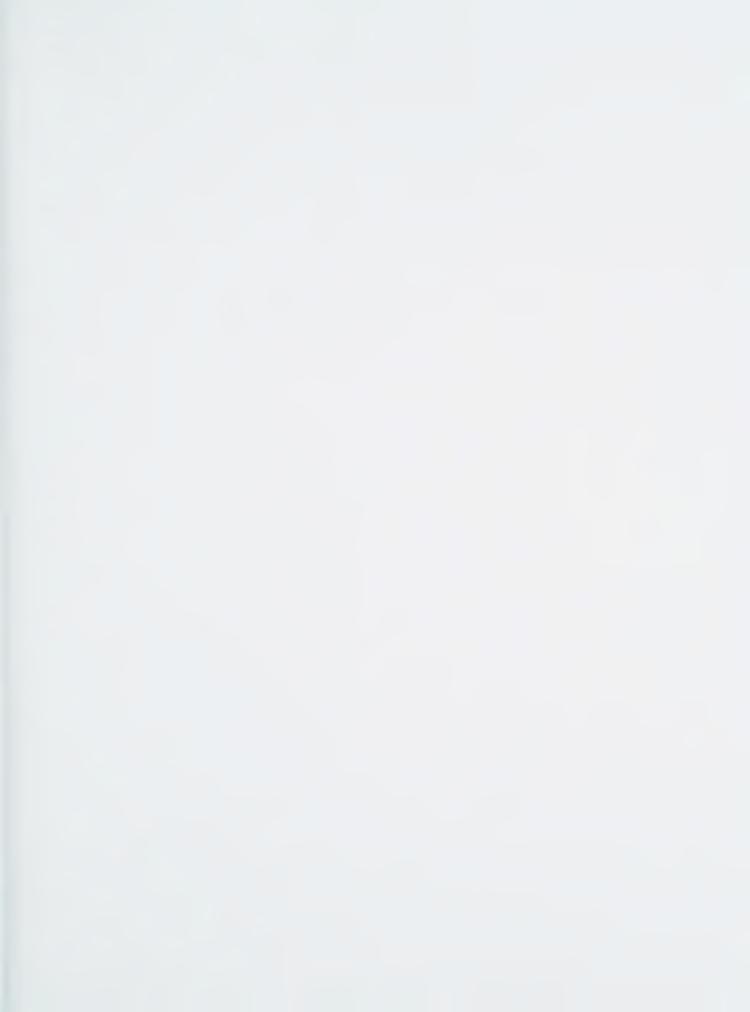
# DE LA MAGISTRATURE DE L'ONTARIO RAPPORT ANNUEL DU CONSEIL

7001 - 7007

# TABLE DES MATIÈRES

# Lettre à l'honorable David Young

- E-2	- I-A E.Motifs des jugements	nnA
-D-I+	- I-d D-I Dois pertinentes	uuy
9-D -	- I-O Continue C-1 -	nnA
27-B	- L-a Bocument des procédures B-1 -	ouu
7-Y -	- I-A srochure	uuy
98	Audiences	(11
9	Résumé des dossiers	(01
9 – 5	Résumé des plaintes	(6
₹ – £	Procedure d'instruction des plaintes	(8
3	Comité consultatif sur les nominations à la magistrature	(1
3	Procédures	(9
٤	Communications	(5
3	Plan de formation	(+
7	Renseignements administratifs	(٤
7 - 1	Membres	(7
Ţ	Composition et modalités de nomination	(1
	noduction	Jutr

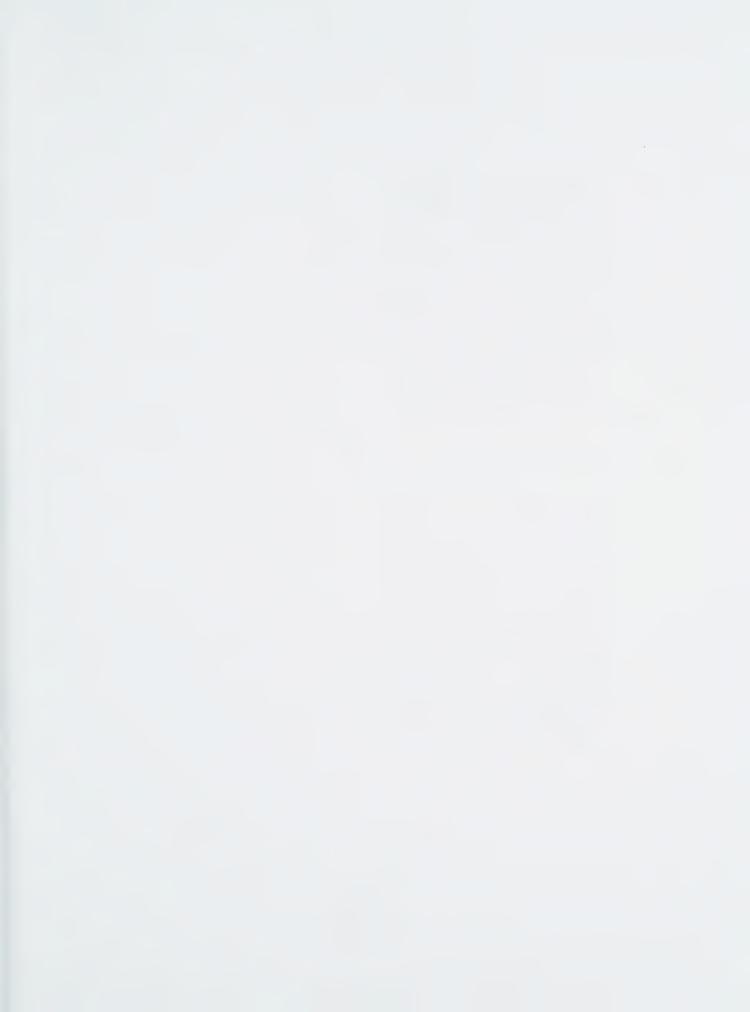


# INTRODUCTION

La période couverte par le présent rapport annuel s'étend du 1er avril 2001 au 31 mars 2002.

magistrature provinciale. du Comité consultatif sur les nominations à la il est représenté par l'un de ses membres au sein directement de la nomination des juges provinciaux, que le Conseil de la magistrature ne s'occupe pas plainte) ou à la demande du juge en question. Bien plainte (si l'invalidité était un facteur dans la telle ordonnance peut être rendue par suite d'une incapable d'exercer les fonctions de sa charge. Une besoins d'un juge qui, en raison d'une invalidité, est rendre une ordonnance pour tenir compte des l'Ontario. Le Conseil de la magistrature peut aussi élaborés par le juge en chef de la Cour de justice de maintien en fonction et les normes de conduite juges provinciaux et a approuvé les critères de approuve annuellement le plan de formation des les juges et protonotaires provinciaux. En outre, il sur les plaintes dont il est saisi par le public contre Le Conseil de la magistrature de l'Ontario enquête

Durant la période couverte par le présent rapport annuel, le Conseil de la magistrature de l'Ontario exerçait sa compétence sur environ 260 juges et protonotaires provinciaux nommés par la province.





CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

Le 31 mars 2002

L'honorable David Young Procureur général de l'Ontario 720, rue Bay, 11e étage Toronto (Ontario)

Monsieur le procureur général,

Nous avons le plaisir de vous présenter le rapport annuel de la septième année d'activités du Conseil de la magistrature de l'Ontario, conformément au paragraphe 51(6) de la Loi sur les tribunaux judiciaires. La période couverte par le présent rapport s'étend du ler avril 2001 au 31 mars 2002.

Veuillez agréer, Monsieur le procureur général, l'expression de nos sentiments respectueux.

Brian W. Lennox

Brian vv. Eermox Juge en chef Cour de justice de l'Ontario

R. Roy McMurtry Juge en chef de l'Ontario

Coprésident, Conseil de la magistrature de l'Ontario JUGE EN CHEF DE L'ONTARIO Воу В. МсМичту



COUR DE JUSTICE DE L'ONTARIO TE INCE EN CHEE Brian W. Lennox

Coprésident, Conseil de la magistrature de l'Ontario

# DE L'ONTARIO CONSEIL DE LA MAGISTRATURE

7001 - 7007

# SEPTIÈME SEPTIÈME

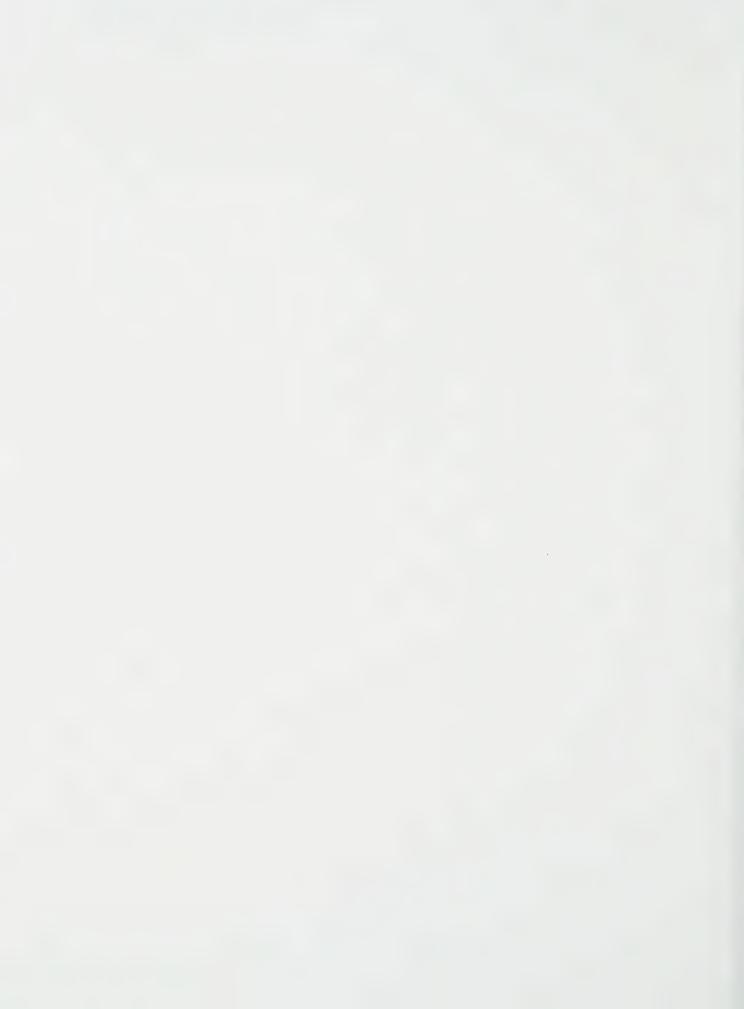




# EIGHTH ANNUAL REPORT

2002 - 2003

ONTARIO JUDICIAL COUNCIL





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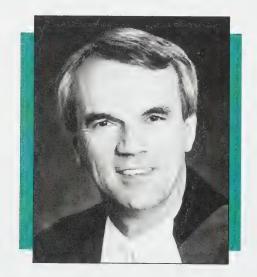
# ONTARIO JUDICIAL COUNCIL





The Honourable R. Roy McMurtry Chief Justice of Ontario

Co-Chair, Ontario Judicial Council



The Honourable Brian W. Lennox CHIEF JUSTICE
ONTARIO COURT OF JUSTICE

Co-Chair, Ontario Judicial Council

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TORONTO, ONTARIO, M5C 2K3



C.P. 914 SUCCURSALE ADELAIDE 31, RUE ADELAIDE EST TORONTO (ONTARIO) M5C 2K3

# ONTARIO JUDICIAL COUNCIL CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

January, 2005

To: All Members of the Queen's Park Press Gallery and All Other Media

Dear Sir/Madam:

A copy of the 2002-2003 Annual Report of the Ontario Judicial Council is attached. In this Report, you will find a comprehensive overview of the role of the Ontario Judicial Council as well as a complete summary of activities during the period from April 1, 2002 to March 31, 2003. This report has been tabled in the Legislature by the Attorney General and can now be released publicly.

The Ontario Judicial Council received 49 complaints in its eighth year of operation, as well as carrying forward 31 complaint files from previous years. Of these 80 complaints, 48 files were closed before March 31, 2003, leaving 32 complaints to be carried over into the ninth year of operation. Nearly half of the 32 complaint files carried over into year nine were opened just prior to the end of year eight (i.e., they had been opened in February and March of 2003).

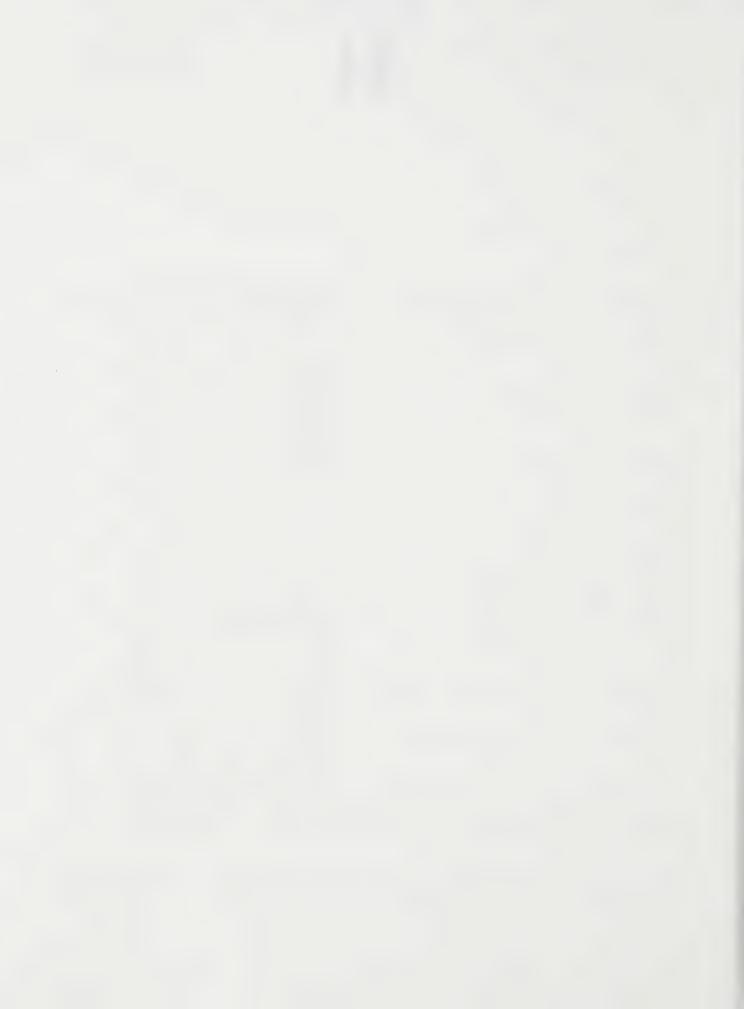
An investigation is conducted in all cases by a complaint subcommittee of Council, which is composed of a provincial judge and a community member. The complaint subcommittee reviews the complainant's letter and, where necessary, reviews the transcript and/or the audiotape of the proceedings that took place in court in order to make a fully-informed decision about a complaint. In some instances, further investigation is conducted where warranted. At the conclusion of its investigation, the complaint subcommittee makes a recommendation as to the disposition of the complaint. This recommendation is reviewed by a four member committee, called a review panel. The review panel has representation from the community, the bench and the bar and none of its members have any prior knowledge of the complaint or know the names of those involved. The review panel must agree with and approve the disposition recommended by the complaint subcommittee. In all complaint files dealt with in year eight, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation which had been conducted. A more detailed description of the complaint process may be found at pages 3 to 5 of the Report.

Forty-five of the 48 complaint files closed were dismissed by the Judicial Council. One complaint was referred to the Chief Justice of the Ontario Court of Justice. Two complaint files (involving the same judge) were referred to a hearing.

Twenty-nine of the 45 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council.

Complaint files that were dismissed because they were found to be outside the jurisdiction of the Council are usually matters that are properly the subject of an appeal to another court (for example, a complainant did not agree with the sentence a judge handed down or a decision that had been made) and/or are matters where no actual allegation of judicial misconduct had been made but dissatisfaction with a judge's decision was expressed. This was the case with 16 of the 29 complaint files that fell into this category.

The remaining 13 of the 29 complaint files that were dismissed because they were found to be outside the jurisdiction of the OJC combined what was determined to be an unfounded allegation of bias, racism, sexism, or "improper actions" with the complaint about a matter that was more properly the subject of an appeal.



Fourteen of the 45 complaint files dismissed by the Ontario Judicial Council were determined to be unfounded after investigation. These 14 complaint files involved allegations that a judge had improperly conducted a case or had engaged in improper or illegal activity (e.g., tampering with court records), allegations of improper behaviour on the bench such as a judge being rude, belligerent, etc., or allegations that a judge's decision was made as a result of his or her alleged lack of impartiality, a conflict of interest or some form of bias.

Of the remaining five (5) complaint files closed in the eighth year of operation, two complaints were dismissed as abandoned by the complainant (file nos. 07-015/01 and 07-043/02), two complaint files were referred to a public hearing (file nos. 06-017/00 and 06-024/00) and one complaint file was referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, to speak to the judge in question (file no. 07-024/01).

Pages 7 to 29 of the 2002-2003 Report provide a brief synopsis of the details of each case, indicating the decision of the Judicial Council and the reason why the decision was made.

#### Contents

Besides providing a case summary of every file closed by Council during the year in question, the eighth Annual Report also contains a copy of its brochure which is distributed to the public (Appendix A), a copy of the Judicial Council's "Procedures Document" (Appendix B), a copy of the "Continuing Education Plan" of the Ontario Court of Justice (Appendix C), a copy of the relevant legislation governing the Ontario Judicial Council (Appendix D) and a copy of the Reasons for Decision in the public hearing held by the Judicial Council concerning file nos. 06-017/00 and 06-024/00 (Appendix E).

I regret that this Annual Report was not provided to you in a more timely manner but I appreciate your understanding that its public release is beyond the control of the Judicial Council.

Yours very truly,

VALERIE P. SHARP, LL.B.

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Registrar

Enclosure

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March 31, 2004

The Honourable Michael Bryant
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is our pleasure to submit the Annual Report of the Ontario Judicial Council concerning its eighth year of operation, in accordance with subsection 51(6) of the *Courts of Justice Act*. The period of time covered by this Annual Report is from April 1, 2002 to March 31, 2003.

With Shouting Deven

Respectfully submitted,

R. Roy McMurtry
Chief Justice of Ontario

Brian W. Lennox

Chief Justice Ontario Court of Justice



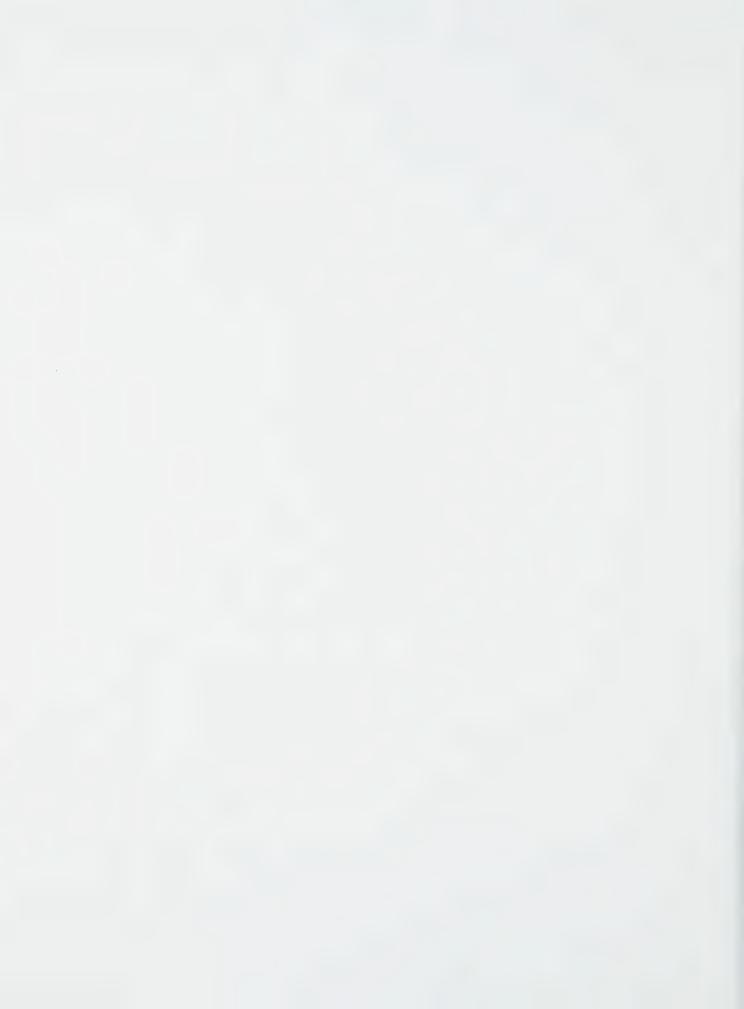
# INTRODUCTION

The period of time covered by this Annual Report is from April 1, 2002 to March 31, 2003.

The Ontario Judicial Council investigates complaints made by the public against provincially appointed judges and masters. In addition, it approves the education plan for provincial judges on an annual basis and has approved criteria for continuation in office and standards of conduct developed by the Chief Justice of the Ontario Court of Justice. The Judicial Council may make an order to accommodate the needs of a judge who, because of a disability, is unable to perform the duties of judicial office. Such an accommodation order may be made as a result of a complaint (if the disability was a factor in a complaint) or on the application of the judge in question. Although the Judicial Council itself is not directly involved in the appointment of provincial judges to the bench, a member of the Judicial Council serves on the provincial Judicial Appointments Advisory Committee as its representative.

The Ontario Judicial Council had jurisdiction over approximately 260 provincially-appointed judges and masters during the period of time covered by this Annual Report.





# EIGHTH OJC ANNUAL REPORT

2002 - 2003

# TABLE OF CONTENTS

Transmission Letter to The Honourable Michael Bryant

# Introduction

1)	Composition and Terms of Appointment	1
2)	Members	1-2
3)	Administrative Information	2
4)	Education Plan	2-3
5)	Communications	3
6)	Procedures	3
7)	Judicial Appointments Advisory Committee	3
8)	Complaints Procedure	3-5
9)	Summary of Complaints	5-6
10)	Case Summaries	6-29
Appe	ndix "A": Brochure	A-1 - A-2
Appe	ndix "B": Procedures Document	B-1 – B-26
	ndix "C": Continuing Education Plan	C-1 - C-6
	ndix "D": Relevant Legislation	D-1 - D-14
Apper	ndix "E": In The Matter of a Complaint Respecting the Honourable Madam Justice Lesley M. Baldwin	E-1 – E-5

# 1. Composition and Terms of Appointment

The Ontario Judicial Council includes:

- the Chief Justice of Ontario (or designate from the Court of Appeal)
- the Chief Justice of the Ontario Court of Justice (or designate from the Ontario Court of Justice)
- the Associate Chief Justice of the Ontario Court of Justice
- a Regional Senior Judge of the Ontario Court of Justice appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General
- two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice
- the Treasurer of The Law Society of Upper Canada or another bencher of the Law Society who is a lawyer, designated by the Treasurer
- a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society
- four persons, neither judges nor lawyers, who are appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General

The Chief Justice of Ontario chairs all proceedings dealing with complaints against specific judges, except for the review panel meetings, which are chaired by a provincial judge, designated by the Judicial Council. The Chief Justice of Ontario also chairs meetings held for the purpose of dealing with applications to accommodate a judge's needs resulting from a disability or meetings held to consider the continuation in office of a Chief Justice or an Associate Chief Justice. The Chief Justice of the Ontario Court of Justice chairs all other meetings of the Judicial Council.

# 2. Members - Regular

CHIEF HISTICE OF ONTARIO

The membership of the Ontario Judicial Council in its eighth year of operation (April 1, 2002 to March 31, 2003) was as follows:

## Judicial Members:

CHIEF JUSTICE OF ONTARIO
R. Roy McMurtry(Toronto)
CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE
Brian W. Lennox(Ottawa/Toronto)
ASSOCIATE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE
J. David Wake(Toronto)
REGIONAL SENIOR JUSTICE
Raymond P. Taillon(Lindsay)
TWO JUDGES APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE
The Honourable Madam Justice Marjoh Agro(Milton)
The Honourable Madam Justice Deborah Livingstone(London)
Lawyer Members:
TREASURER OF THE LAW SOCIETY
OF UPPER CANADA
OF UPPER CANADA  Vern P. Krishna, Q.C(Toronto)
Vern P. Krishna, Q.C(Toronto)  LAWYER DESIGNATED BY THE TREASURER OF
Vern P. Krishna, Q.C(Toronto)  LAWYER DESIGNATED BY THE TREASURER OF THE LAW SOCIETY OF UPPER CANADA

]

## Community Members:

**PAUL HAMMOND** ......(Bracebridge)
President and CEO, Muskoka Transport Ltd.

WILLIAM JAMES ......(Toronto)
Chair, Inmet Mining

Ontario Metis – Aboriginal Association

One Lay Member Position - vacant - (from February 28, 2001)

## *Members* – *Temporary*

Sections 87 and 87.1 of the *Courts of Justice Act* gives the Ontario Judicial Council jurisdiction over complaints made against every person who was a master of the Supreme Court prior to September 1, 1990 and every provincial judge who was assigned to the Provincial Court (Civil Division) prior to September 1, 1990. When the Ontario Judicial Council deals with a complaint against a master or a provincial judge of the former Civil Division, the judge member of the complaint subcommittee is replaced by a temporary member appointed by the Chief Justice of the Superior Court of Justice — either a master or a provincial judge who presides in "Small Claims Court", as the case may be.

During the period of time covered by this report, the following individuals served as temporary members of the Ontario Judicial Council when dealing with complaints against these provincially-appointed judges and masters:

#### MASTERS JUDGES

- Master Basil T. Clark, Q.C. The Honourable .
- Master R.B. Linton, Q.C

Mr. Justice M.D. Godfrey

• Master R.B. Peterson

• The Honourable Madam Justice Pamela Thomson

Subsection 49(3) of the *Courts of Justice Act* permits the Chief Justice of the Ontario Court of Justice to appoint a provincial judge to be a temporary member of the Ontario Judicial Council to meet the quorum requirements of the legislation with respect to Judicial Council meetings, review panels and hearing panels. The following judge of the Ontario Court of Justice has been appointed by the Chief Justice of the Ontario Court of

Justice to serve as a temporary member of the Ontario Judicial Council when required:

The Honourable Justice Bernard M. Kelly

# 3. Administrative Information

Separate office space adjacent to the Office of the Chief Justice of the Ontario Court of Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.

Councils' offices are used primarily for meetings of both Councils and their members. Each Council has a separate phone and fax number and its own stationery. Each has a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

In the eighth year of operation, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, an assistant registrar (for part of the year) and a secretary:

VALERIE P. SHARP, LL.B. – Registrar THOMAS GLASSFORD – Assistant Registrar (from September 23, 2002 to commencement of parental leave on February 24, 2003) ANA BRIGIDO – Acting Assistant Registrar (from February 24, 2003) JANICE CHEONG – Secretary

# 4. Education Plan

The Chief Justice of the Ontario Court of Justice is required, by section 51.10 of the *Courts of Justice Act*, to implement, and make public, a plan for the continuing judicial education of provincial judges and subs. 51.10(1) requires the education plan to be approved by the Judicial Council. During the period of time covered by this Annual Report a continuing education plan was developed by the Chief Justice in conjunction with the

Education Secretariat and the continuing education plan was approved by the Judicial Council. A copy of the continuing education plan for 2002-2003 can be found at Appendix "C".

#### 5. Communications

The website of the Ontario Judicial Council continues to include information on the Council as well as information about upcoming hearings. Copies of "Reasons for Decision" are posted on the website when released and continue to be available until they can be incorporated into an Annual Report.

The address of the OJC website is: www.ontariocourts.on.ca/.

#### 6. Procedures

Some minor changes were made to the OJC Procedures document in the last reporting year to allow for the speedier processing of complaint files. The new administrative procedures call for the Registrar to make an initial assessment of each complaint file as it is opened and determine whether or not a transcript and/or an audiotape of the court proceedings will be necessary for the complaint subcommittee's investigation. If the Registrar determines that is the case, the material is ordered at the time the file is opened. This results in a significant savings of time. The Registrar may also recommend that a complaint be dismissed by the complaint subcommittee without further investigation if the Registrar is of the opinion that a complaint is outside the jurisdiction of the OJC or is frivolous, vexatious or an abuse of process as set out in the governing legislation. The Registrar's assessment of a complaint is subject always to the assessment of the members of the investigating complaint subcommittee and its unanimous decision about a complaint is subject to the review of the members of the review panel

These changes to the OJC's administrative procedures have had the effect of shortening the average length of time to process a complaint file from about a year to just over three months in cases where a complaint is outside the jurisdiction of the OJC and there is no investigation to be conducted. In these instances, the only "delay" encountered in processing a file is simply the period of time it takes to bring the file before a review panel at one

of the OJC's regularly scheduled meetings. In instances where investigation is necessary and a transcript and/or audiotape of court proceedings is required, the changes in administrative procedure have resulted in significant time savings and the average length of time to process more complex files has been shortened from a year or longer to six months or less.

A detailed outline of the OJC's procedures is included in Appendix "B".

# 7. Judicial Appointments Advisory Committee

Since proclamation of amendments to the *Courts of Justice Act* in February, 1995, the Judicial Council no longer has any direct involvement in the appointment of provincial judges to the bench. However, a member of the Ontario Judicial Council serves on the provincial Judicial Appointments Advisory Committee (J.A.A.C.) as its representative. The Honourable Madam Justice Marjoh Agro was appointed by the OJC to act as its representative on J.A.A.C.

# 8. The Complaints Procedure

A complaint subcommittee of Judicial Council members, comprised always of a provincially-appointed judicial officer (a judge, other than the Chief Justice of the Ontario Court of Justice, or a master) and a lay member, examines all complaints made to the Council. The governing legislation empowers the complaint subcommittee to dismiss complaints which are either outside the jurisdiction of the Council (i.e., complaints about federally appointed judges, matters for appeal, etc.) or which, in the opinion of the complaint subcommittee, are frivolous or an abuse of process. All other complaints are investigated further by the complaint subcommittee. A more detailed outline of the Judicial Council's procedures is included as Appendix "B".

Once the investigation is completed, the complaint subcommittee may recommend the complaint be dismissed, refer it to the Chief Justice of the Ontario Court of Justice for an informal resolution, refer the complaint to mediation or refer the complaint to the Judicial Council, with or without recommending that it hold a hearing. The decision of the complaint subcommittee must be unanimous. If the complaint subcommittee members cannot agree, the complaint subcommittee members refers the complaint to the Council (or a review panel thereof) to determine what action should be taken.

A mediation process may be established by the Council and only complaints which are appropriate (given the nature of the allegations) will be referred to mediation. The Council must develop criteria to determine which complaints are appropriate to refer to mediation.

The Council (or a review panel thereof), will review the recommended disposition of a complaint (if any) made by a complaint subcommittee and may approve the disposition or replace any decision of the complaint subcommittee if the Council (or review panel), decides the decision was not appropriate. If a complaint has been referred to the Council by the complaint subcommittee, the Council (or a review panel thereof), may dismiss the complaint, refer it to the Chief Justice of the Ontario Court of Justice or a mediator or order that a hearing into the complaint be held. Review panels are composed of two provincial judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member. At this stage of the process, only the two complaint subcommittee members are aware of the identity of the complainant or the subject judge.

Complaint subcommittee members who participated in the screening of the complaint are not to participate in its review by Council or a subsequent hearing. Similarly, review panel members who dealt with a complaint's review or referral will not participate in a hearing of the complaint, if a hearing is ordered.

By the end of the investigation and review process, all decisions regarding complaints made to the Judicial Council will have been considered and reviewed by a total of six members of Council – two members of the complaint subcommittee and four members of the review panel.

Provisions for temporary members have been made in order to ensure that a quorum of the Council is able to conduct a hearing into a complaint if a hearing has been ordered. Hearing panels are to be made up of at least two of the remaining six members of Council who have not been involved in the process up to that point. At least one member of a hearing panel is to be a lay member and the

Chief Justice of Ontario, or his designate from the Court of Appeal, is to chair the hearing panel.

A hearing into a complaint is public unless the Council determines, in accordance with criteria established under section 51.1(1) of the *Courts of Justice Act*, that exceptional circumstances exist and the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, in which case the Council may hold all or part of a hearing in private.

Proceedings, other than hearings to consider complaints against specific judges, are not required to be held in public. The identity of a judge, after a closed hearing, will only be disclosed in exceptional circumstances as determined by the Council. In certain circumstances, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a judge. The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints.

After a hearing, the hearing panel of the Council may dismiss the complaint (with or without a finding that it is unfounded) or, if it finds that there has been misconduct by the judge, it may impose one or more sanctions or may recommend to the Attorney General that a judge be removed from office.

The sanctions which can be imposed by the Judicial Council for misconduct are as follows:

- a warning
- a reprimand
- an order to the judge to apologize to the complainant or to any other person
- an order that the judge take specific measures, such as receiving education or treatment, as a condition of continuing to sit as a judge
- suspension, with pay, for any period
- suspension, without pay, but with benefits, for up to thirty days

NB: any combination of the above sanctions may be imposed

• a recommendation to the Attorney General that the judge be removed from office

NB: this last sanction is not to be combined with any other sanction

The question of compensation of the judge's costs incurred for legal services in the investigation of a complaint and/or hearing into a complaint may be considered by the review panel or by a hearing panel when a hearing into the complaint is held. The Council is empowered to order compensation of costs for legal services (based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services) and the Attorney General is required to pay compensation to the judge in accordance with the recommendation.

The legislative provisions of the *Courts of Justice Act* concerning the Ontario Judicial Council are included as Appendix "D" to this Report.

# 9 Summary of Complaints

The Ontario Judicial Council received 49 complaints in its eighth year of operation, as well as carrying forward 31 complaint files from previous years. Of these 80 complaints, 48 files were closed before March 31, 2003, leaving 32 complaints to be carried over into the ninth year of operation. Nearly half of the 32 complaint files carried over into year nine were opened just prior to the end of year eight (i.e., they had been opened in February and March of 2003).

An investigation was conducted in all cases. The complaint subcommittee reviewed the complainant's letter and, where necessary, reviewed the transcript and/or the audiotape of the proceedings that took place in court in order to make its determination about the complaint. In some instances, further investigation was conducted where it was warranted. In all cases, the four members of each review panel agreed with the recommended disposition of the complaint by the complaint subcommittee after the review panel examined the complaint and the investigation which had been conducted.

Forty-five of the 48 complaint files closed were dismissed by the Judicial Council. One complaint was referred to the Chief Justice of the Ontario Court of Justice. Two complaint files (involving the same judge) were referred to a hearing.

Twenty-nine of the 45 complaint files dismissed by the Ontario Judicial Council during the period of time covered by this report were found to be outside the jurisdiction of the Council.

Complaint files that were dismissed because they were found to be outside the jurisdiction of the Council are usually matters that are properly the subject of an appeal to another court (for example, a complainant did not agree with the sentence a judge handed down or a decision that had been made) and/or are matters where no actual allegation of judicial misconduct had been made but dissatisfaction with a judge's decision was expressed. This was the case with 16 of the 29 complaint files that fell into this category.

FISCAL YEAR:	96/97	97/98	98/99	99/00	00/01	01/02	02/03
Opened During Year	71	66	77	59	55	52	49
Continued from Previous Year	21	41	51	64	57	49	31
Total Files Open During Year	92	107	128	123	112	101	80
Closed During Year	51	56	64	66	63	63	48
Remaining at Year end	41	51	64	57	49	38	32

The remaining 13 of the 29 complaint files that were dismissed because they were found to be outside the jurisdiction of the OJC combined what was determined to be an unfounded allegation of bias, racism, sexism, or "improper actions" with the complaint about an appealable matter.

Fourteen of the 45 complaint files dismissed by the Ontario Judicial Council were determined to be unfounded after investigation. These 14 complaint files involved allegations that a judge had improperly conducted a case or had engaged in improper or illegal activity (e.g., tampering with court records), allegations of improper behaviour on the bench such as a judge being rude, belligerent, etc., or allegations that a judge's decision was made as a result of his or her alleged lack of impartiality, a conflict of interest or some form of bias.

Of the remaining five (5) of the 48 complaint files closed in the eighth year of operation, two complaints were dismissed as abandoned by the complainant (file nos. 07-015/01 and 07-043/02), two complaint files were referred to a public hearing (file nos. 06-017/00 and 06-024/00) and one complaint file was referred to the Chief Justice of the Ontario Court of Justice, Brian W. Lennox, to speak to the judge in question (file no. 07-024/01).

## 10. Case Summaries

In all cases that were closed during the year, notice of the Judicial Council's decision, with the reason(s) therefore, was given to the complainant and to the subject judge, in accordance with the judge's instructions on notice (please see page B-26 of the O.J.C. Procedures Document, Appendix "B").

Files are given a two-digit prefix indicating the year of Council's operation in which they were opened, followed by a sequential three-digit file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 06-55/01 was the fifty-fifth file opened in the sixth year of operation and was opened in calendar year 2001).

Details of each complaint with identifying information removed, where applicable, follow.

**\* \* \*** 

#### CASE SUMMARIES

# CASE NOS. 06-017/00 and 06-024/00

Two complaints were received - one from two members of the private defence bar and the other from members of an association of criminal defence lawyers (the Criminal Lawyers Association). The complainants wrote to the Ontario Judicial Council concerning a judge who had chaired "The Joint Committee on Domestic Violence" which was composed of senior government officials and experts on domestic violence. The Joint Committee's mandate was to advise the Attorney General and the Government of Ontario on how best to implement the recommendations of a previously-held Coroner's Inquest into the murder of a victim of domestic violence. The report of that Joint Committee was submitted to the Attorney General in August of 1999. The judge, as former Chair of the Joint Committee, wrote to the Attorney General in July of 2000, enclosing a letter from the other four committee members, urging the government to take action to implement the recommendations that had been contained in the Joint Committee's report. In her letter to the Attorney General, the judge noted that, "I endorse their requests and can add parenthetically, that I have observed no noticeable changes in the manner in which counsel are approaching these difficult cases in the criminal courts in which I preside." The letter to the Attorney General, together with a copy of the letter from the other committee members, was given to the media by one of the members of the Joint Committee. The letters formed the basis of an article in the Toronto Star which appeared on the front page of it's July 19, 2000 edition.

The Criminal Lawyers Association (the CLA) alleged that it was improper for a sitting judge to chair a committee whose recommendations related to the issue of domestic violence. The CLA alleged that "it is inconsistent with the separation of the judicial and executive branches for a sitting judge to be involved in this kind of work. By participating on the Committee as a judge, she risks associating the entire judiciary with a single political view of this social problem".

The CLA further stated that when members of the judiciary are involved with Commissions of Inquiry or reviews in order to advise the Executive, the judge involved should step down from his/her judicial position for the period that he/she is "working for the government". The CLA further stated that the judge who was the chair of the joint committee wrote to the Attorney General, a year after the release of the Joint Committee's Report, to complain about "the lack of implementation of existing recommendations and strategies" from the inquest and the Joint Committee. The CLA was of the view that "the way in which government policy is implemented in response to a real or perceived social problem is a political matter and one on which a judge should not be importuning the Attorney General". The CLA alleged that the judge continued to "lobby for the implementation of those views" and suggested that the judge "is incapable of maintaining appropriate judicial neutrality on this issue" as a consequence.

Both the CLA and the two members of the private defence bar objected to the observation made in the judge's letter to the Attorney General that she had observed "no noticeable change in

## CASE SUMMARIES

the manner in which counsel are approaching these difficult cases in the criminal courts". Both complainants alleged that expressing such a view was "inconsistent with the neutrality required by a judge" and further that "if she wishes to advocate a particular political perspective, it cannot and should not be done from the Bench."

The complaint subcommittee asked for and reviewed a response to the complaint from the judge. In her response, the judge made it clear that her remarks about "counsel" was a reference to Crown Counsel only, not defence counsel as incorrectly surmised in the complainant's letters. The judge also provided a copy of the Joint Committee's Report with her response. The complaint subcommittee referred the complaint to the members of the review panel who, after reviewing the material gathered by the complaint subcommittee, decided that although there was no problem with a judge acting as a chair or being involved in the work of a committee, such as the one in question, a problem did arise from the "lobbying" letter to the Attorney General after the committee had completed its mandate and submitted its report. It was the view of the complaint subcommittee and the review panel members that advocating a position as a sitting judge is inappropriate judicial conduct and a hearing into the matter should be held.

A Notice of Hearing was issued and a hearing was held on April 2, 2002. As the criteria for a private hearing were not met, the hearing was public.

At the conclusion of the hearing, the hearing panel determined that, although the complaint was not altogether unfounded, a finding of judicial misconduct was not warranted. The full text of the "Reasons for Decision" in this matter may be found at Appendix "E".

#### CASE NO. 07-006/01

The following information was provided to the OJC by the complainant. The complainant was accused of impaired driving and attended in court to enter a plea of "not guilty". The complainant was represented by counsel who made various arguments to the court prior to trial regarding the alleged infringement of the complainant's Charter rights. The Charter applications were dismissed by the judge and he ruled that the arrest by the officer of the accused/complainant was justified and the detention of the accused/complainant after the breathalyser test was also justified. The complainant advised that after ruling against him on the Charter arguments, the trial judge made the suggestion to the Crown that the Crown should ask for costs against the complainant and the complainant alleged that this exhibited bias against the complainant on the part of the judge. The complainant further alleged that he felt so intimidated by this suggestion of the trial judge regarding costs that he instructed his lawyer to change his plea from "not guilty" to "guilty" because he felt sure he would not get a fair trial in front of someone who had made such a suggestion.

The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response to the complaint from the judge. The complaint subcommittee recommended that the complaint be dismissed after its review of this material. The

#### CASE SUMMARIES

complaint subcommittee was of the view that the mere fact that the judge did not agree with the complainant's Charter arguments and had made a suggestion to the Crown regarding costs is not judicial misconduct. The complaint subcommittee was also of the view that the judge's decision and his suggestion regarding costs did not amount to intimidation of the complainant as alleged. The complaint subcommittee noted that, in his response, the judge had advised that counsel for the complainant had advanced arguments in support of the Charter application that were totally frivolous and lacking in merit and it was this that led him to the conclusion the application would fail, not any lack of impartiality on his part. The complaint subcommittee also noted that in his response, the judge advised that the complainant likely changed his plea from "not guilty" to "guilty" on the advice of his counsel since the unsuccessful Charter application was the only defence available to the complainant. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed

#### CASE NO. 07-009/01

The complainant advised that she had laid a charge of assault against her husband. The complainant alleged that, after the lunch break, the Crown Attorney approached her and told her that "the judge was rushing him and wanted to do a pre-trial to see if we should have a trial". The complainant stated that when the case was called into court, the judge was not interested in conducting a trial but urged the parties to enter into a peace bond. The complainant advised that

she and her husband each spoke to a lawyer during a court recess and this lawyer explained to each of them what a peace bond was. The complainant further advised that she told the lawyer she spoke to that a peace bond wasn't going to work and it wouldn't make any difference if she signed a piece of paper. The complainant stated that, "By this time I was in such a state I did not know what was actually going on and I just wanted it to be over." The complainant went on to state that she felt "this court was a farce" and "Criminal Court...turned into a Family Court."

The complaint subcommittee ordered and reviewed a copy of the transcript of the evidence and asked for and reviewed a response from the judge. The complaint subcommittee recommended that the complaint be dismissed as it was evident from the transcript of the court proceedings and the response from the judge that the Crown was not in a position to start the trial on the date it was marked for trial and everyone had agreed to a pre-trial hearing. The complaint subcommittee further reported that it was evident in the transcript of the proceedings and in the judge's response that, if the agreement reached during the pre-trial was not to everyone's satisfaction, a trial could have taken place before a different judge at a later date and this had been explained to the parties. The complaint subcommittee noted that everyone willingly participated in the pre-trial and the eventual peace bonds that were entered into and the complaint subcommittee could find no misconduct on the part of the judge in this matter. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-015/01

The complainant, who was self-represented, reported that he had been involved in ongoing litigation in family court since 1999. The complaint subcommittee reported to the review panel that his very lengthy complaint was about an ongoing custody dispute and the complainant alleged that the judge who was the subject of his complaint mismanaged the file, mis-directed himself, was devoid of any understanding of the law and listened only to the lawyer for the mother of the children. The complaint subcommittee recommended that the complaint be dismissed because it had made several requests to the complainant for promised material and documentation which had not been forthcoming. The complaint subcommittee also noted that it appeared to them that the complainant is simply an unhappy litigant who was dissatisfied with the decisions that had been made in his case. The complaint subcommittee further noted that if the complainant was dissatisfied with the judgment of the court or irregularities in procedure, he had the remedy of appealing the decisions that were made and without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed subject to the file being re-opened if the complainant provides the further information that had been requested to support his allegations.

## CASE NO. 07-023/01

The complainant was a self-represented litigant who attempted to apply for relief in a family law matter through the filing of various motions. In the incident under review, the complainant alleged that the presiding judge was rude and abusive and demonstrated "blatant unfairness" and a "discriminatory stance" regarding the complainant's court matter. The complainant advised that she was attempting to bring forward three motions that she claimed had not been decided upon by the judge at an earlier court appearance. In attempting to argue these motions, the complainant alleged that the judge's decisions regarding hearing submissions from the parties were racially biased. The complainant further alleged that the judge remarked, "I don't care what happen (sic) to your child".

The complaint subcommittee ordered and reviewed a copy of the transcript of the hearing. The complaint subcommittee recommended that the complaint be dismissed because, in its view, the transcript disclosed no judicial misconduct on the part of the judge. The complaint subcommittee also noted that the remark attributed to the judge by the complainant ("I don't care what happen (sic) to your child") was not made. The complaint subcommittee reported that the judge was merely attempting to control the court proceeding and explain the process to the complainant. The complaint subcommittee was of the view that the judge exercised his judicial discretion in dealing with the complainant's motion requests and, without any indication of judicial misconduct, the exercise of judicial discretion is

outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-024/01

Information was received by the OJC that a judge in a court location had discovered a number of pages of graphic adult sexual material sitting in the paper tray of the shared printer in the office area of the courthouse. The material was turned over to the Court Services Manager at the court location. A review of the computer server printer log revealed that the material had been printed out from a certain judge's computer on the evening previous to its discovery. The complaint subcommittee retained the services of a private investigator who confirmed that someone had logged onto the judge's computer between the hours of 7:20 p.m. and 9:20 p.m. on the evening in question and the courthouse security logs also revealed that the judge whose computer had been used had been in the courthouse during those hours on the evening in question. The judge's laptop computer was made available to the Judicial Council's investigator for inspection. The computer subcommittee reported that an analysis of the computer's hard drive did not reveal any records relating to the evening in question. However, the analysis also revealed that a significant amount of material had been deleted from the computer's hard drive prior to the computer being made available for inspection. The investigator was able to restore some of the deleted files and some of those files were found to contain graphic images of adult sexual material that were downloaded onto the computer from adult sexual websites. The complaint subcommittee asked the judge for a response to this complaint.

In his response, the judge acknowledged that he had printed out a number of sexually explicit adult images on the evening in question and also acknowledged that he had previously stored a number of very graphic depictions of sexual activity on his computer which he had downloaded from various "free" websites. The judge acknowledged that accessing these websites from a government computer in a government office was clearly inappropriate and wrong and he admitted to being deeply embarrassed for having done so. The complaint subcommittee recommended to the review panel that this complaint be referred to the Chief Justice. After discussion of the complaint and the investigator's report, the members of the review panel were satisfied that an appropriate response to this error in judgment would be to have the matter referred to the Chief Justice with certain conditions attached. The review panel was of the view that the judge should have a "Web Filter" installed on his government-issued computer to ensure that he would not be able to access inappropriate websites in future and that he should also apologize to the staff people and other judges who came into contact with the inappropriate material that he had accessed on his computer. The Chief Justice reported to the review panel after his meeting with the judge and advised that he was satisfied that the conditions imposed on the referral of the complaint had been met and the judge had expressed remorse for what he recognized was a serious error in judgment. The review panel expressed their satisfaction with the

report provided to them by the Chief Justice and indicated that the file could now be closed.

### CASE NO. 07-025/01

The complainant was convicted of an assault on his father-in-law that was committed during a domestic disturbance. He complained to the OJC, the Ministry of the Attorney General and the O.P.P. about the conduct of everyone who was involved in the assault case, alleging that the police and the crown were involved in a course of malicious prosecution. In his letters to the OJC, the complainant alleged that the trial judge was biased against him, had been prejudiced in favour of the police and prosecutors and had conducted himself inappropriately throughout the trial. In particular, the complainant alleged that a lawyer he had retained to represent him told him that the judge "had a hard on" for him (the complainant) and "this judge is out to get you". The complainant also stated that at a lunch break during his trial, the presiding judge came over to the complainant's lawyer, interrupting a private discussion the complainant was having with him, and "intervened - to talk about them all going to lunch - the legal crowd." The complainant alleged that this was inappropriate and constituted judicial misconduct on the part of the trial judge.

The complaint subcommittee ordered and reviewed a copy of the transcript of the trial and asked for and reviewed a response from the judge. The complaint subcommittee recommended that the complaint be dismissed as it was their view that the transcript revealed no bias or prejudice or inappropriate comments by the trial

judge. The complaint subcommittee noted that the judge exhibited a good deal of patience with the complainant throughout the court proceedings. The complaint subcommittee further noted that the judge cannot be held accountable for comments supposedly made about him by the complainant's lawyer. The complaint subcommittee also reported on the judge's response to that aspect of the complaint concerning his approach to the complainant's lawyer regarding lunch arrangements.

In his response, the judge explained that during the lunch break he observed the complainant's lawyer speaking to the complainant and waited until the lawyer noticed him and briefly stopped his conversation with the complainant before he (the judge) approached them. The judge advised that he was not within earshot of the complainant and his lawyer while they were having their discussion. The judge noted that he approached the complainant's lawyer to let him know where he (the judge) and the court staff would be going for lunch. The judge advised that he did this because court was sitting in a very small community with limited dining options and it is his practice to advise both defence and crown counsel where he and the court staff are eating so that they can go elsewhere if they wish or, if time and circumstance permit, can join the judge and court staff for lunch. The judge advised that lawyers are only permitted to join the judge for lunch if both the crown and defence counsel are together. The judge also noted that having lunch together sometimes permits the court and counsel to discuss general issues regarding satellite court efficiencies, legal aid and other resource needs but that current cases before the court are never discussed and counsel all know that.

The judge noted that the complainant was present during this conversation about lunch arrangements and if he had a problem with his lawyer joining the judge and the court staff for lunch on the occasion in question, he could have asked his lawyer not to do so. The judge advised that he is aware that such a request has been made in the past by other accused people. The judge further noted that, in his opinion, openly offering professional civility in the unique environment of a satellite court setting is not inappropriate and the complaint subcommittee agreed that this does not amount to judicial misconduct. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-026/01

The complainant is the father of a person who was convicted of impaired driving. The complainant alleged that the judge exhibited "outright bias towards police" and/or that the judge "subscribes to the mindset (sic) of organizations such as M.A.D.D." (Mothers Against Drunk Driving) and/or the judge lacked the experience of a "matured" justice in that she lacked the "insight or capacity to believe the [police] officer testified anything but the truth." The complainant advised that the conviction had been appealed and upheld and that the appeal judge had "failed to observe any errors or bias" in the decision of the trial judge so he felt his "only recourse" was to write to the OJC to make a complaint. The complaint subcommittee recommended that the complaint be dismissed as they reported that a review of the transcript of the trial provided to them by the complainant failed to reveal any bias or judicial misconduct on the part of the trial judge and the complaint is unfounded. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-028/01

The complainant is the father of children who were the subject of an application by a Children's Aid Society to take his children into the temporary custody of the CAS for their protection. The complainant alleged that the judge violated his civil and human rights in making an order against him and awarding the CAS temporary custody of his children.

The complaint subcommittee reviewed the transcript of the hearing and reported that, in its view, there was no judicial misconduct on the part of the judge who heard the application. The complaint subcommittee further indicated that the judge's conduct of the hearing was entirely appropriate and therefore recommended that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### CASE NO. 07-030/01

The complaint subcommittee reported that the complainant was the subject of criminal charges before the courts. The complainant was unhappy with the judge because he refused him bail but the complainant also alleged that the judge "expelled" his lawyer from the courtroom and banned him from ever appearing before him in court again. The complaint subcommittee

ordered and reviewed a copy of the transcript of the evidence. The complaint subcommittee recommended that the complaint be dismissed as the transcript revealed that the judge was justified in dismissing the complainant's lawyer from court as he had misled the court on a material issue and this was stated on the record by the judge. The complaint subcommittee further noted that the complaint that the judge had refused bail was outside the jurisdiction of the OIC as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in refusing bail and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-036/02

The complainant was dissatisfied with court orders made by a judge which restricted the ability of the Family Responsibility Office to suspend her ex-husband's driver's licence as punishment for not paying the support he owed to her. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the rulings that he had made despite the unfortunate financial consequences for the complainant. The complaint subcommittee noted that an appeal of the rulings by the Family Responsibility Office

would be the only appropriate remedy and, without evidence of judicial misconduct, the complaint is outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-037/02

The complainant was involved in an on-going dispute in family court and made allegations of misconduct against a number of individuals, including a provincially-appointed judge. The Judicial Council investigated the allegations of misconduct against the provincially-appointed judge only, as the complaints against the other individuals were outside the jurisdiction of the Judicial Council. The specific complaints made against the judge by the complainant were allegations that he'd had an extra-marital affair with the complainant's wife and had fathered a child with her. The complainant further alleged that the judge interfered in the custody and access dispute between the complainant and his estranged wife and that the judge displayed favouritism towards the lawyer who was representing the complainant's estranged wife.

The complaint subcommittee reviewed the complaint materials and the response that was requested from the judge in question. The complaint subcommittee recommended that the allegations of interference in the complainant's family court matters and "favouritism" that the judge allegedly displayed towards the lawyer for the complainant's estranged wife be dismissed as unfounded, as the complaint subcommittee reported that the complainant and his estranged

wife do not, and have not, appeared before the judge on any matters. The complaint subcommittee also recommended that the complaint concerning the allegation of an extra-marital affair be dismissed, as it was vehemently denied by both parties and, in any event, is outside the jurisdiction of the Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 07-038/02

The complainant was the plaintiff in a civil action in Small Claims Court. The complainant advised that he enlisted the services of an agent to attend a pre-trial on his behalf because he was unable to appear himself due to another commitment. The complainant alleges that, although his agent was thoroughly briefed to go forward, the judge refused the agent standing and dismissed the claim at the pre-trial with costs ordered against the plaintiff. The complainant also objected to a comment the pre-trial judge allegedly made that his absence at the pre-trial led the judge to conclude that he was not "seriously pursuing" his claim.

The complaint subcommittee reviewed the complaint and requested and received a response from the judge. The complaint subcommittee advised that a response from the judge was necessary because pre-trial hearings are not on the record in Small Claims Court and, therefore, no transcript was available. In addition, the complaint subcommittee requested and received an account of the event from the defendant's solicitor who had attended the pre-trial.

In his response, the judge noted that it was his opinion that the agent for the plaintiff was not

adequately briefed in the facts and applicable law. In addition, by not attending or taking other steps to inform the court of his inability to appear, the judge was left with the impression that the claim was not being seriously pursued by the plaintiff.

The lawyer for the defendant supported the judge's account that the plaintiff's agent was unable to display any real knowledge of the case or answer queries from the judge on settlement. In his opinion, the judge's decision to dismiss the case ended a claim that was an abuse of process and a claim that was not being seriously pursued.

Upon review of this information, the complaint subcommittee recommended that the complaint be dismissed, as in its view there was no judicial misconduct evident in the exercise of the judge's discretion to dismiss the complainant's action. If errors in law were committed (and the Judicial Council made no such finding), such errors may be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### CASE NO. 07-039/02

The complainant was a victim of a break and enter. The complainant advised that the Crown Attorney withdrew the break and enter charge against the accused on the date that had been set for trial. The complainant advised that she was displeased with this decision, particularly since the person accused of the break and enter is her neighbour and had, in the complainant's opin-

ion, a relevant criminal record. The complainant alleged that the judge who accepted the Crown Attorney's request to withdraw the charge was a former law partner of the accused's defence counsel and, as a result, there was misconduct on the part of the judge for "going along" with the Crown Attorney.

The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the judge's decision to accept the Crown's decision to withdraw the charge. The complaint subcommittee noted that the Crown Attorney has the ultimate discretion to determine if a charge should proceed and may, at any stage in a prosecution, ask a court to withdraw a charge. The complaint subcommittee noted that the judge in this instance accepted the Crown's request and the fact that the judge was a former law partner of the accused's defence counsel would be completely irrelevant to the Crown's request. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-040/02

The complainant was before the courts in a dispute with his ex-wife regarding custody and access to the children of their marriage. The complainant advised that he was unhappy with decisions which had been made by the case management judge during the course of the proceedings.

The complaint subcommittee recommended that the complaint be dismissed because it was clear that the complainant had no understanding of the case management process where one judge is assigned to a case from the beginning of the litigation up until the commencement of the trial. The complaint subcommittee further noted that if the complainant is dissatisfied with the judgment of the court with respect to decisions that had been made he has the remedy of appealing the decisions, and without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-041/02

The complainant appeared in court charged with assault and assault with a weapon. The complainant alleged that the judge was "inhuman" and "barbarous" and had "destroyed" him. The complainant claimed that he is deaf and, because he did not have the aid of a hearing device at the court proceeding, was not able to discuss his case with his lawyer with full understanding of what was going on. He alleged that the judge did not allow for an opportunity for the complainant and his lawyer to speak with one another prior to the beginning of the hearing.

The complaint subcommittee reviewed the complaint material and the transcript of the hearing. The complaint subcommittee reported that the transcript did not support the allegations made by the complainant. The complaint subcommittee further reported that it appeared clear from the transcript that the complainant and his counsel were given the opportunity to speak prior to proceeding. It was also the view of the subcommittee that at no time did the complainant express misunderstanding or hearing difficulties

when answering questions and the complainant's lawyer did not express any concerns to the court. The review panel agreed with the recommendation by the complaint subcommittee that the complaint be dismissed.

### CASE NO. 07-042/02

The complainant is a defence attorney who alleged that the subject judge is "deliberately and actively participating in the pre-trial conferences and subsequently insisted on conducting most of the trials". He alleged that this practice is "totally unfair, biased and objectionable". The complainant cites cases over the past 25 years, in which the judge has "shocked and embarrassed" him by conducting the pre-trial, in which he alleged that sometimes he offered his personal opinions to the parties, and then presided over the trial.

The complaint subcommittee asked for and received a response to the complaint from the judge complained about. The complaint subcommittee reported that it viewed the judge's response as a complete answer to the complainant's allegations. In addition, the complaint subcommittee reported that it had independently verified that the judge's method and practice of conducting pre-trials was fair and reasonable through contact with members of the local Bar Association and with other members of the judiciary in the area where the judge presides. Further, after reviewing the transcripts provided by the complainant, the complaint subcommittee was of the view that the allegations of misconduct were not supported and therefore recommended that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### CASE NO. 07-043/02

The complainant alleged that a judge in Small Claims Court gave instructions to the Deputy judge who eventually heard his case, and claimed that by doing so, the Small Claims Court judge "discriminated" or was "prejudiced" towards his case before the courts. The complaint subcommittee reported that the specific allegations of "interference" by the judge were not clear from the original complaint and the complaint subcommittee requested further details from the complainant.

The complaint subcommittee reported that there was no response by the complainant to its repeated requests for additional information and recommended that the complaint be dismissed as it was their view that there were insufficient particulars to determine the nature of the judicial misconduct alleged and it was unable to conduct a proper investigation. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed, provided that the complaint file be re-opened in the event that the complainant provides the further information requested.

### CASE NO. 07-044/02

The complainant was sentenced after entering a plea to one count of criminal harassment. The complainant advised that the trial judge imposed a conditional discharge with numerous conditions and a term of probation for three years. The complainant alleged the trial judge was unfair,

and incompetent. The complainant further alleged that the judge accepted lies in evidence from her "incompetent lawyer" and breached the complainant's privacy rights by quoting from a psychiatric assessment.

The complaint subcommittee reviewed a copy of the trial transcript which had been provided to the OJC by the complainant. The complaint subcommittee reported that the complainant was a medical doctor who had been attempting to obtain her licence to practise as a psychiatrist. The complaint subcommittee reported that the College of Physicians and Surgeons had suspended the complainant because she refused to participate in a psychiatric assessment. The complaint subcommittee reported the following facts: the complainant came before the court charged with five counts of criminal harassment, one count of mischief and one count of uttering threats. The victims included numerous doctors and staff at the College of Physicians and Surgeons and elsewhere. The complainant was represented by counsel during the court proceedings. The complaint subcommittee further reported that the complainant had been in custody several months and while detained was ordered to undergo an assessment regarding her fitness to stand trial. The psychiatrist's assessment of the complainant's fitness to stand trial was before the court for consideration. Both the Crown and defence counsel referred to the report in court, in the presence of the complainant and there was no objection by her to this reference to the report on the record. The complainant had entered a plea of guilty to one count of criminal harassment and the facts had been read in on all counts, again apparently without objection from

the complainant and with her counsel's consent. The complaint subcommittee advised that the complaint arose after the sentencing hearing. The complaint subcommittee reported that the judge rejected the Crown's request for a custodial sentence and imposed a conditional discharge on one charge of criminal harassment with numerous conditions being imposed on the complainant. The complaint subcommittee reported that the complainant was asked if she understood the conditions that were being imposed and she responded, "It's clear.". She was further asked if she understood the consequences of a breach of any of the conditions and she responded, "It won't happen.".

The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in the matter and the transcript revealed no evidence of impropriety, misconduct or unfairness on the judge's part. The complaint subcommittee also noted that there was no objection on the record by the complainant to the use of the psychiatric assessment report, its contents, the conditions imposed by the judge or the competency of the complainant's counsel. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-045/02

The complainant is a retired Metro Police Officer and the father of a woman who was the Crown witness at a criminal trial. The complainant advised that his daughter's ex-husband had breached the conditions of a "peace bond" and had appeared in

court for trial. The complainant alleged that the presiding judge at the trial was rude and insulting to his daughter regarding her testimony.

The complaint subcommittee reviewed the transcript of the trial, together with the audiotape of the hearing. The complaint subcommittee reported that the judge found the ex-husband "not guilty" as charged, largely because he did not find the testimony of the complainant's daughter to be credible. In the view of the complaint subcommittee, the presiding judge was not rude or insulting, but merely blunt and specific in outlining the clear inconsistencies in the complainant's daughter's testimony that was given to the court. The complaint subcommittee recommended that the complaint be dismissed, as there was no evidence of judicial misconduct on the part of the judge in his assessment of the credibility of the witness. The review panel agreed with the recommendation of the complaint subcommittee.

### CASE NO. 07-046/02

The complainant is a paralegal and advised that he appeared in court to represent the plaintiff in an action in the Small Claims Court. The complainant alleged that the judge made numerous decisions against the interests of his client and did so because he felt the judge had "something personal" against the complainant, perhaps because of a previous complaint to the OJC which he had made. The complaint subcommittee examined the material and court documents that had been included with the complainant's letter of complaint. The complaint subcommittee recommended that the complaint be dismissed

as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-049/02

The complainant alleged that his home was "illegally raided" by the police who were searching for drugs. The complainant stated that there was no search warrant provided to him at the time of the raid and a warrant was only produced after he made inquiries to the police and at the court "warrants office". The complainant alleged that the judge who signed the search warrant was thereby guilty of misconduct. The complainant further advised that he is suing both the judge and the police and there is a pre-trial scheduled on his civil action. After reviewing the material provided by the complainant, the complaint subcommittee recommended that the complaint be dismissed as it was their view that there was no misconduct in a judge exercising his judicial discretion when presented with what he or she views as reasonable grounds to issue a warrant. The complaint subcommittee further stated that the validity of a search warrant is an issue to be raised at trial when both crown and defence counsel can review the information that was submitted to obtain the warrant and argue about

whether or not it was properly issued at that time. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 07-051/02

The complaint subcommittee reported that this complaint was one of multiple complaints filed by the same complainant against 2 judges and 1 justice of the peace within the context of matrimonial litigation. The complaint subcommittee advised that the complainant alleged that in this complaint the judge's conduct constituted "defamation of [the] character" of the complainant.

The complaint subcommittee ordered and reviewed the transcript and audiotape of the hearing in question. The complaint subcommittee reported that, in their view, there was no judicial misconduct on the part of the judge. The complaint subcommittee advised that, in their opinion, the complainant was dissatisfied with the various orders made by the presiding judge, and the exercise of judicial discretion, without judicial misconduct, is outside the jurisdiction of the Ontario Judicial Council. As a result, the complaint subcommittee recommended that the complaint be dismissed and the review panel agreed with that recommendation.

### CASE NO. 07-052/02

The complainant alleged that the judge before whom he appeared in a family court matter was biased against men. The complaint subcommittee reported that there were no facts offered by the complainant to substantiate this claim of

bias. The complaint subcommittee further noted that it would appear that the complainant was not happy with certain support orders that had been made and for costs which had been ordered against him by the judge. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion and that the decisions made were within the judge's jurisdiction. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed

### CASE NO. 08-001/02

The complainant is a resident of Red Deer, Alberta and had read a newspaper account of a well-publicized instance where a judge in Ontario had excluded a lawyer from appearing in her courtroom because the judge deemed that the apparel worn by the lawyer was inappropriate for a courtroom. The complainant made several other sweeping allegations against judges generally including bias, lack of accountability and lack of independence. The complaint subcommittee recommended that the complaint be dismissed as there was no factual basis for allegations made against judges generally and no judicial misconduct had occurred in the incident reported in the newspaper. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

# CASE NO. 08-002/02 and CASE NO. 08-003/02

The complainant was the respondent to an application for protective custody of her children which was made by a Children's Aid Society. She objected firstly to the fact that a judge had issued a warrant to apprehend her children and turn them over to the custody of the Children's Aid Society. The complainant maintained that the warrant was issued on the basis of incorrect and biased information supplied to the court by the Children's Aid Society involved. The complainant further alleged that the second judge who presided over the actual hearing where protective custody was given to the Children's Aid Society made the wrong decision and accepted "biased evidence" from the Children's Aid Society witnesses who appeared in court to give testimony.

The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety or misconduct in the complaint against either of the two judges. The complaint subcommittee further noted that if the complainant was dissatisfied with the judgment of the court, she had the remedy of appealing the decisions that were made. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 08-004/02

The complainant's spouse had been charged with assaulting her and she advised that the matter was scheduled for trial. The complainant advised that on the date set for trial, the matter was resolved by the accused entering into a Peace Bond. The complainant stated that she should

have been allowed to testify at the hearing but she was not called to give evidence by the Crown Attorney and the judge should not have proceeded without hearing from her. The complaint subcommittee recommended that the complaint be dismissed as there was no allegation of any judicial impropriety in the complaint and no judicial misconduct on the part of the judge complained about. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 08-005/02

The complainant was the respondent on an application in a child protection matter in family court. He alleged that the judge's decision was the result of the judge being manipulated by the applicant and her counsel, despite the judge being advised of this by the complainant. The complainant further advised that he disagreed with the decision of the judge with respect to jurisdiction and to the forum for the hearing of this matter. The complainant also advised that he disagreed with the award of interim custody to the Children's Aid Society. The complaint subcommittee recommended that the complaint be dismissed because if the complainant was dissatisfied with the judgment of the court, he had the remedy of appealing the decisions that were made and without evidence of judicial misconduct, the matter is outside the jurisdiction of the OJC. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 08-006/02

Four individuals wrote separately to the OJC to complain about the decision of a judge in a court case after reading about it in the news media. The case in question dealt with charges of cruelty to animals and the defendants were convicted after trial. The four individuals felt that the sentence imposed by the judge was inadequate. The complaint subcommittee recommended that the complaint be dismissed as it is outside the jurisdiction of the OJC. The complaint concerned a decision made by a judge and there is no allegation or evidence of judicial misconduct in the exercise of the judge's discretion and it is, therefore, outside the jurisdiction of the OJC. If any of the parties to the court case were dissatisfied with the decision or if there were errors in law committed by the judge, such errors could be remedied on appeal. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 08-007/02

The complaint subcommittee reported that a complaint had been received from a group of 12 courts administration staff alleging misconduct by a judge during the Ontario Public Service Employees Union (OPSEU) strike which had concluded just prior to their complaint being received. The group of employees alleged that the judge had behaved impartially and unprofessionally when he made remarks about strikers interfering with the business of the court and drafted a memo for circulation to courts administration staff with the alleged purpose of "creating an atmosphere of fear and intimidation

within our workplace". The complainants further alleged that the judge, through writing the aforementioned memo, "participated and cooperated with management... in activities specifically calculated to circumvent and/or interfere with the labour relations process".

The complaint subcommittee reviewed the complaint material and requested and received a response to the complaint from the judge in question. After considering all of the material, the complaint subcommittee recommended that the complaint be dismissed, as there was no clear evidence of misconduct by the judge. The complaint subcommittee felt that the content and timing of the judge's memo was unfortunate, but were satisfied that the judge's conduct did not amount to judicial misconduct as it has been defined by the Ontario Judicial Council in previous matters. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### CASE NO. 08-009/02

The complainants are two lawyers who advised that they practise primarily family law and who expressed displeasure with the manner in which a presiding judge before whom they appeared administered her court list. Both complainants advised that they appeared in court to present a consent order with a signed statement of facts. The complainants indicated that they made the court clerk aware of the matter in advance. However, notwithstanding the advance notice, the complainants advised that the presiding judge proceeded to deal with a major case on the

list before dealing with their matter and they'd had to wait five (5) hours.

The complaint subcommittee reviewed the complaint materials submitted and recommended that the complaint be dismissed, as it was of the view that this matter is outside the jurisdiction of the Ontario Judicial Council. The complaint subcommittee noted that judges administer their own court lists and are not directed by the Ontario Judicial Council as to the manner in which it is, or should be, done. The complaint subcommittee was of the view that this complaint may be a matter more appropriately dealt with by the local or regional judicial administration or by the local Bench and Bar committee in the community in which the complainants practise. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-011/02

The complainant was charged with assault causing bodily harm and advised that he appeared in court intending to enter a plea of "not guilty". The complainant alleged that his lawyer told him that he had spoken to the judge prior to the hearing and asked "hypothetically" how she would rule if she heard the case. The complainant advised that his lawyer told him that the judge had allegedly indicated that she "would view it very seriously". The complainant advised that after hearing this information, he indicated that he felt intimidated by the judge and told his lawyer to request another judge to hear the case. However, in the end, the complainant advised

that he "felt compelled in court to do what the court wanted". The complainant alleged judicial misconduct against the judge in "compelling him" to plead guilty.

The complaint subcommittee reviewed the complaint and requested and reviewed a copy of the transcript of the proceeding. In its view, the transcript did not support the allegations that the complainant was compelled or intimidated to plead guilty by the court and therefore recommended that the complaint be dismissed. The complaint subcommittee also reported that the complainant was represented by counsel who agreed with the description of the assault charge as outlined by the Crown Attorney and who had made a joint submission on sentencing. The complaint subcommittee advised it was their opinion that the complainant had second thoughts about the course of action to which he had agreed and was looking for a way to overturn the conviction, since an appeal was no longer an option due to the passage of time. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.

### CASE NO. 08-012/02

This complainant represented himself on a criminal charge and alleged that the judge presiding at his trial violated his "Charter Rights to full answer and defence" and, as a result, he did not have a fair trial. The complainant also claimed that, during the criminal trial, he repeatedly stated, "I have not had the opportunity to prepare my defence to be able to make full answer to the allegations before the court", and alleged

that the judge continued the proceeding without his participation.

The complaint subcommittee reported to the review panel that, in its view, there was no judicial misconduct on the part of the judge. The complaint subcommittee commented that if the complainant's Charter Rights were indeed violated, that determination is outside the jurisdiction of the Ontario Judicial Council.. If errors in law were committed by the judge (and the Judicial Council made no such finding), such errors could be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-013/02

The complainant was charged with assault and alleged that the judge presiding over his trial had violated his human rights by not allowing any accommodation in the court schedule for the routine he had to follow in order to treat his diabetes. The complainant claimed that he was required to stay in the courtroom for five hours before a lunch break was allowed and that this caused him to experience "signs of hypoglycaemia" ranging from "confusion, disorientation and irritability" to "extreme thirst, fatigue and weakness". The complainant further claimed that he made everyone aware of his medical condition and the strict routine of food, medication and exercise that he is required to follow to maintain proper blood sugar levels.

The complaint subcommittee reviewed the transcript of the trial and reported that no request for accommodation of the complainant's dietary and/or exercise routines had been made by either the complainant or his legal counsel. In the view of the complaint subcommittee, there was no evidence of judicial misconduct on the part of the trial judge and the complaint was motivated by the complainant's unhappiness with the trial judge's unfavourable finding of credibility which had resulted in a conviction for assault. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-014/02

The complainant is the common-law spouse of the father of two children who were apprehended by a Children's Aid Society (C.A.S.) and taken into protective custody. The complainant advised that, at the hearing into the C.A.S. application for custody, the C.A.S. sought Crown Wardship with no access at all for either of the biological parents. The complainant alleged that the judge granted the C.A.S. application and ruled against her common-law spouse because he is disabled and she weighs 400 pounds.

The complaint subcommittee reviewed the complaint materials and recommended that the complaint be dismissed, as it was of the view that the concerns expressed in the complaint related to the judge's decision and did not contain allegations of judicial misconduct. The complaint subcommittee recommended that if the complainants are dissatisfied with the judge's decision, they may wish to

appeal the ruling. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

## CASE NO. 08-017/02

The complainant advised that he was the plaintiff in an action in Small Claims Court and advised that he and his representative had appeared for a pre-trial. The complainant further advised that neither the defendant nor a representative for the defendant appeared for the pretrial. The complainant advised that, although notice to appear was provided to the defendant, the judge asked the plaintiff to phone the defendant to request their appearance. When the defendant was unable to be reached, the complainant alleged that the judge called the defendant personally and left a message for him to contact the pre-trial conference room directly. The complainant advised that the defendant finally contacted the pre-trial conference room and the pre-trial proceeded by phone. According to the complainant, the judge's actions in contacting the defendant "prejudged" his case, as he alleged it contradicted court rules, whereby judgment may proceed in a party's absence.

The complaint subcommittee noted that it is the discretion of the pre-trial judge as to how a pre-trial will be conducted and recommended that the complaint be dismissed. It was also the view of the complaint subcommittee that this matter related to the exercise of judicial discretion and is not a matter of judicial misconduct and therefore is outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the rec-

ommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-018/02

The complainant was a party to proceedings in Family Court. The complainant alleged that the presiding judge was not receptive to his submissions nor the materials that he had filed. The complainant also advised that he was unhappy with the rulings made and alleged that the judge is biased against him and asked the Judicial Council to re-assign his cases to another judge in a different location.

The complaint subcommittee reviewed the correspondence and the material submitted with the complaint. The complaint subcommittee recommended that the complaint be dismissed, as it was of the view that the complaint related to dissatisfaction with the judge's decisions and there was no specific judicial misconduct alleged. The complaint subcommittee further noted that the complainant had the ability to bring an application before the judge requesting that the judge no longer preside over the case if she felt that she could not be objective in matters involving the complainant. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-019/02

The complainant was charged with uttering a forged document, specifically altering the payment amount on a cheque before it was presented for payment. The complainant had

trouble with and had fired several lawyers. The complainant was self-represented when appearing before the subject judge at the pre-trial. The complainant alleged that the subject judge made some inaccurate comments about the nature of a pre-trial and, in addition, the complainant alleged the judge's conduct towards her was rude.

The complaint subcommittee reviewed the complaint and requested and reviewed a copy of the transcript of the proceeding. In its view, the transcript did not support the allegations made by the complainant and therefore recommended that the complaint be dismissed. The complaint subcommittee further commented that the nature of a criminal pre-trial was explained carefully and accurately to the defendant by the judge on more than one occasion during the proceeding. The complaint subcommittee was of the view that the subject judge tried to be of assistance to the complainant and there was no evidence of rudeness or misconduct of any sort. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-020/02

The complainant was a party to a court proceeding. The complainant alleged that there were omissions in the transcript that he received relating to his court matter. The complainant alleged that the omissions related to the judge's decision to not allow the complainant to submit evidence. The complainant requested that the Ontario Judicial Council investigate the accuracy of the transcripts.

The complaint subcommittee reviewed the correspondence and recommended that the complaint be dismissed, as it was its view that the complaint related to dissatisfaction with the judge's decisions on the admissibility of evidence and not specifically to an allegation of judicial misconduct. The complaint subcommittee also noted that the accuracy or inaccuracy of transcripts are not within the jurisdiction of the Ontario Judicial Council to investigate. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-021/02

The complainant is a respondent in an ongoing child protection proceeding. He advised that he is the paternal grandfather of the child who was the subject of the proceeding and who was apprehended from the grandfather's custody by a Children's Aid Society. The complainant wanted the matter referred to Criminal Court rather than Family Court, due to an allegation made against him of sexual impropriety. The complainant also made allegations against two different judges who are alleged to have been prejudiced in ruling against him.

The complaint subcommittee reviewed the complaint and recommended that it be dismissed as being without foundation. The complaint subcommittee noted that the only "evidence" of prejudice provided by the complainant was the fact that the judges had not ruled in the complainant's favour. The complaint subcommittee was of the view that the complaints were really

about the decisions made by the judges, which may be appealed, and are outside the jurisdiction of the Ontario Judicial Council without evidence of judicial misconduct. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-022/02

The complainant was a respondent in a dispute over the custody of and access to his child and he alleged the presiding judge suspended access without affording him an opportunity to be heard. In addition, the complainant alleged that the judge refused to allow him to communicate through the interpreter who was present at the proceeding.

The complaint subcommittee reviewed the complaint and reviewed a copy of the transcript of the proceeding. The complaint subcommittee reported that the complainant had a court appointed interpreter present throughout the proceeding and that there was no interference by the judge in the communication between the complainant and the interpreter. In its opinion, the complainant was given the opportunity to make submissions through the interpreter and the allegations made by the complainant were not supported by the transcript. The complaint subcommittee therefore recommended that the complaint be dismissed. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### CASE NO. 08-025/02

The complainant is a parent whose children were taken into the care of a Children's Aid Society (CAS). A subsequent child protection hearing was held in the matter. The initial complaint received dealt with the time taken for the hearing and the lateness of the decision. Once the judge's decision was received, a further complaint was filed against the decision with allegations that the presiding judge was prejudiced against the complainant. The complainant further alleged that the presiding judge was in a conflict of interest in hearing the case, because prior to his appointment to the bench, he was a member of a law firm that used to work on Children's Aid Society matters.

The complaint subcommittee reviewed the complaint. The complaint subcommittee recommended that the complaint be dismissed as it was of the view that there was no judicial misconduct evident in the exercise of the judge's discretion in making the decision that he made. If errors in law were committed by the judge (and the OJC made no such finding), such errors may be remedied on appeal and are, without evidence of judicial misconduct, outside the jurisdiction of the Ontario Judicial Council. In addition, the subcommittee was of the view that the fact that the judge's former law firm acted for the CAS does not, in and of itself, support the complainant's allegation of bias. The review panel agreed with the recommendation of the complaint subcommittee that the complaint be dismissed.

### CASE NO. 08-026/02

The complainant, who was not represented by counsel, appeared in court with an application under the Charter of Rights for a stay of proceedings so that he could be allowed to "assemble, prepare and present his defence" at trial. The complainant alleged that the presiding judge violated his rights under the Charter by disallowing his application.

The complaint subcommittee reviewed the complaint. The complaint subcommittee recommended that the complaint be dismissed as, in its view, this was a matter for appeal, and without evidence of judicial misconduct is outside the jurisdiction of the Ontario Judicial Council. The review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### CASE NO. 08-027/02

The complainant is the applicant in a family estate matter involving the executrix of the will and the passing of accounts of the estate. The complaint subcommittee reported that the complainant had made non-specific references to a number of judges in her letter to the Council, and there were no particulars of any allegations of misconduct.

As a result, the complaint subcommittee recommended that the complaint be dismissed and the review panel agreed with the recommendation of the complaint subcommittee to dismiss the complaint.

### CASE NO. 08-028/02

The complainant attended Small Claims Court as a plaintiff in a matter where he was trying to garnish somebody's wages. According to the complainant, the "defendant made a motion for stopping the garnishee" and the presiding judge reserved decision. When the complainant eventually received and reviewed the decision, the complainant cited supposed examples of "unfairness, injustice and partiality" relating to the decision and the conduct of the presiding judge.

The complaint subcommittee was of the view that the complaint was about the decision of the judge and that there were insufficient particulars of judicial misconduct provided by the complainant, other than the statement about the judge's alleged, "unfairness, injustice and partiality". As a result, the complaint subcommittee concluded that the complaint was outside the jurisdiction of the Ontario Judicial Council, as the OJC cannot interfere in the decision-making process. The review panel agreed with the complaint subcommittee's recommendation that the complaint be dismissed.

### CASE NO. 08-030/02

The complainant advised that he had brought an action against his next-door neighbour in Small Claims Court and was awarded a default judgement including damages and costs. The complainant advised that after the default judgment was awarded, his next-door neighbour retained legal counsel who was able to present a motion, after the appeal date had expired and without new information, to set aside the default judge-

ment. The complainant alleged that the success of this motion was based on information that was illegally acquired through the court. The complainant further advised that, on the same day as the motion, he filed a written representation arguing against the hearing of the motion. The complainant advised that the Deputy Judge who heard the motion reserved his decision. The complainant advised that he then received a "Notice of Pre-trial" to appear before a judge of the Small Claims Court without receiving a copy of the decision of the Deputy Judge with respect to the motion to set aside the default judgement. The complainant alleged that this was done under the direction of another Small Claims Court judge who was the case management judge. The complainant alleged that both Small Claims Court judges were involved in what he referred to as "organized judicial crime". The Small Claims Court judge who case managed the file was alleged to have knowingly collaborated with the Deputy Judge and the defendant's lawyer in directing it to a pre-trial conference, without the consent of both parties or on a motion by a party in accordance with the complainant's view of the Rules of Civil Procedure.

The complainant's allegations against the Small Claims Court judge who conducted the pre-trial were that he previewed the case prior to the pre-trial and, upon reading the material, ordered it set for trial. It is the complainant's contention that if the pre-trial judge had not been involved in the so-called "organized judicial crime", he would have dismissed the case rather than allowing it to proceed to trial.

The complaint subcommittee recommended that the complaint be dismissed, as it was of the view that the complaint provided no basis upon which a determination of judicial misconduct could be made. In the complaint subcommittee's view, there was no evidence of any conspiracy or collusion on the part of the judges involved and the allegations were unsupported by the complainant. The review panel agreed with the complaint subcommittee's recommendation to dismiss the complaint.

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## ONTARIO JUDICIAL COUNCIL

2002-2003 Annual Report

# APPENDICES

APPENDIX "A" Do You Have A Complaint?

APPENDIX "B" Procedures Document

APPENDIX "C" Education Plan

APPENDIX "D" Legislation

APPENDIX "E" In the Matter of a Complaint

Respecting the Honourable Madam

Justice Lesley M. Baldwin



# APPENDIX-A

ONTARIO JUDICIAL COUNCIL – DO YOU HAVE A COMPLAINT?

## ONTARIO JUDICIAL COUNCIL - DO YOU HAVE A COMPLAINT?

The information in this brochure deals with complaints of misconduct against a Provincial Judge or a Master.

## Provincial Judges in Ontario – Who are they?

In Ontario, most criminal and family law cases are heard by one of the many judges appointed by the province to ensure that justice is done. Provincial Judges, who hear thousands of cases every year, practised law for at least ten years before becoming judges.

wrong conclusion, they may request a review or an **appeal** of the judge's decision in a higher court. This higher court is more commonly known as an appeal court. If the appeal court agrees that a mistake was made, the original decision can be changed, or a new hearing can be ordered.

## Ontario's Justice System:

In Ontario, as in the rest of Canada, we have an adversarial justice system. In other words, when there is a conflict, both parties have the opportunity to present their version of the facts and evidence to a judge in a courtroom. Our judges have the difficult but vital job of deciding the outcome of a case based on the evidence they hear in court and their knowledge of the law.

For this type of justice system to work, judges **must** be free to make their decisions for the right reasons, without having to worry about the consequences of making one of the parties unhappy – whether that party is the government, a corporation, a private citizen or a citizens' group.

## Is a Judge's Decision Final?

The judge's decision can result in many serious consequences. These can range from a fine, probation, a jail term or, in family matters, placement of children with one parent or the other. Often, the decision leaves one party disappointed. If one of the parties involved in a court case thinks that a judge has reached the

## Professional Conduct of Judges

In Ontario, we expect high standards both in the delivery of justice and in the conduct of the judges who have the responsibility to make decisions. If you have a complaint about the conduct of a **Provincial Judge** or a **Master**, you may make a formal complaint to **The Ontario Judicial Council**.

Fortunately, judicial misconduct is unusual. Examples of judicial misconduct could include: gender or racial bias, having a conflict of interest with one of the parties or neglect of duty.

## The Role of the Ontario Judicial Council

The Ontario Judicial Council is an agency which was established by the Province of Ontario under the *Courts of Justice Act*. The Judicial Council serves many functions, but its main role is to investigate complaints of **misconduct** made about provincially-appointed judges. The Council is made up of judges, lawyers and community members. The Council does **not** have the power to interfere with or change a judge's decision on a case. Only an appeal court can change a judge's decision.

## APPENHIX-A

### ONTARIO JUDICIAL COUNCIL - DO YOU HAVE A COMPLAINT?

## Making a Complaint

If you have a complaint of misconduct about a Provincial Judge or a Master, you must state your complaint in a signed letter. The letter of complaint should include the date, time and place of the court hearing and as much detail as possible about why you feel there was misconduct. If your complaint involves an incident outside the courtroom, please provide as much information as you can, in writing, about what you feel was misconduct on the part of the judge.

## How are Complaints Processed?

When the Ontario Judicial Council receives your letter of complaint, the Council will write to you to let you know your letter has been received.

A subcommittee, which includes a judge and a community member, will investigate your complaint and make a recommendation to a larger review panel. This review panel, which includes two judges, a lawyer and another community member, will also carefully review your complaint prior to reaching its decision.

## Decisions of the Council

Judicial misconduct is taken seriously. It may result in penalties ranging from issuing a warning to the judge, to recommending that a judge be removed from office.

If the Ontario Judicial Council decides there has been misconduct by a judge, a public hearing may be held and the Council will determine appropriate disciplinary measures.

If after careful consideration, the Council decides there has been no judicial misconduct, your complaint will be dismissed and you will receive a letter outlining the reasons for the dismissal

In all cases, you will be advised of any decision made by the Council.

## For Further Information

If you need any additional information or further assistance, in the greater Toronto area, please call 416-327-5672. If you are calling long distance, please dial the toll-free number: 1-800-806-5186. TTY/Teletypewriter users may call 1-800-695-1118, toll-free.

# Written complaints should be mailed or faxed to:

The Ontario Judicial Council P.O. Box 914 Adelaide Street Postal Station 31 Adelaide Street East Toronto, Ontario M5C 2K3

416-327-2339 (FAX)

## Just a reminder...

The Ontario Judicial Council may only investigate complaints about the **conduct** of provincially-appointed Judges or Masters. If you are unhappy with a judge's **decision** in court, please consult with a lawyer to determine your options for appeal.

Any complaint about the **conduct** of a federally-appointed judge should be directed to the Canadian Judicial Council in Ottawa.



# APPENDIX-B

# ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT



OJC - PROCEDURES DOCUMENT - INDEX

## ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT

# **INDEX**

COMPLAINTS		
Generally		B-1
COMPLAINT SUBCOMMI	TTEES	
Composition		B-1
	res	
Investigation		
Guidelines & Rules of p	procedure	
re: investigation of com	nplaints	B-1
Agreement on how to p	roceed	B-2
Dismissal of Complaint		B-2
Conducting Investigation	on	B-2
Previous Complaints		B-2
Information to be obtain	ned by Registrar	B-2
Transcripts, etc		B-2
Response to Complaint		B-2
Generally		B-3
Advice and Assistance		B-3
Multiple Complaints		B-3
Interim Recommendation	on to Suspend or Reassign	B-3
Complaint against Chie		
– Interim Recommenda	ations	B-3
Criteria for Interim Rec	ommendations	
to Suspend or Reassign	1	B-3
	Recommendation	

# 

## OJC – PROCEDURES DOCUMENT – INDEX

Reports	to	Review	Panel	S
---------	----	--------	-------	---

	When Investigation Complete	B-4
	Guidelines & Rules of Procedure re:	
	Reports to review panels	В-4
	Procedure to be Followed	В-4
	No Identifying Information	В-5
	Decision to be Unanimous	В-5
	Criteria for Decisions by Complaint Subcommittees:	
	a) to dismiss the complaint	B-5
	b) to refer to the Chief Justice	B-5
	c) to refer to mediation	B-5
	d) to recommend a hearing	В-6
	Recommendation re: hearing.	В-6
	e) compensation	B-6
	Referring Complaint to Council	В-6
	Information to be Included	B-6
REVIE	W PANELS	
	Purpose	B-6
	Composition	
	When Review Panel Formed	
	Guidelines and Rules of Procedure	B-7
Rev	view of Complaint Subcommittee's Report	
	Review in Private	B-7
	Procedure on Review	
Ref	ferral of Complaint to a Review Panel	
	When Referred	В-8
	Power of Review Panel on Referral	B-8
	Guidelines and Rules of Procedure	B-8
	Guidelines re: Dispositions	
	a) ordering a hearing	В-8
	b) dismissing a complaint	В-8
	c) referring a complaint to the Chief Justice	В-9
	d) referring a complaint to mediation	B-9

## OJC - PROCEDURES DOCUMENT - INDEX

REVIEW PANELS (cont'd)	
Notice of Decision	
Decision communicated	B-9
Administrative Procedures	
HEARING PANELS	
Applicable Legislation	B-9
Composition	B-10
Power	B-10
HEARINGS	
Communication by Members	B-10
Parties to the Hearing	B-10
Public or Private/All or Part	В-10
Open or Closed Hearing – Criteria	B-11
Revealing judge's name when Hearing was private - Criteria	B-11
When an order prohibiting publication of judge's	
name may be made, pending the disposition of	
a complaint – Criteria	
New Complaint	B-11
PROCEDURAL CODE FOR HEARING	
Preamble	B-12
Interpretation	B-12
Presentation of Complaints	B-12
Notice of Hearing	B-12
Response	B-13
Disclosure	B-13
Pre-Hearing Conference	B-13
The Hearing	
Pre-Hearing Rules	B-14
POST-HEARINGS	
Disposition at Hearing	
Disposition	B-14
Combination of Sanctions	B-1

## ABBUT NODEX - H

## OJC - PROCEDURES DOCUMENT - INDEX

Report to Attorney General	
Report	
Identity Withheld	
Judge not to be Identified	B-15
Order to Accommodate	
Order to Accommodate	B-15
Removal from Office	
Removal	B-15
Tabling of Recommendation	
Order removing judge	
Application	
COMPENSATION	
After Complaint Disposed Of	B-16
Public or Private	
Recommendation	
Where Complaint Dismissed After a Hearing	
Disclosure of Name	
Amount and Payment	
CONFIDENTIALITY AND PROTECTION OF PRIVACY	7
Information to Public	
Policy of Judicial Council	B-17
Complaint Subcommittee Investigation Private	
Review Panel Deliberation Private	
When Identity of Judge Revealed to Review Panel	B-17
Hearings may be Private	
Judge's name not disclosed	В-17
Order prohibiting publication	B-18
Criteria established	B-18
Report to Attorney General	B-18
Judge not to be identified	B-18
Order not to disclose	B-18
Exception	B-18
Amendments to Freedom of Information	
and Protection of Privacy Act	B-18

## DO YOU HAVE A COMPLAINT

C	LOMMODATION OF DISABILITIES	
	Application for Order	B-19
	Duty of Judical Council	B-19
	Undue Hardship	B-19
	Guidelines and Rules of Procedure	B-19
	Opportunity of Participate	B-19
	Order Binds the Crown	B-19
	Chair for Meeting	B-19
	Chair entitled to Vote	B-19
	Quorum for Meeting	B-19
	Expert Assistance	В-19
	Confidential Records	B-19
	Accommodation Order after a Hearing	B-20
	Rules of Procedure and Guidelines	B-20
	Application in Writing	B-20
	Accommodation Subcommittee	B-20
	Report of Accommodation Subcommittee	B-20
	Initial Consideration of Application and Report	B-20
	Threshold Test for Qualification as Disability	B-21
	Notification of Minister	B-21
	Submissions on Undue Hardship	B-21
	Time frame for Response	B-21
	Meeting to Determine Order to Accommodate	B-21
	Copy of Order	B-21
PE	CIAL CONSIDERATIONS	
	French-speaking complainants/judges	B-22
	Complaints against Chief Justice et al	
	Complaints against Small Claims Court judges	
	Complaints against Masters	

## OJC - PROCEDURES DOCUMENT - INDEX

## **ADMINISTRATIVE MATTERS**

Intake/Opening Complaint Files	B-24
Complaint Subcommittees	
Review Panels	B-25
Meeting Materials	B-25
Notice of Decision – Notification of Parties	В-26
Closing Files	В-26

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT

Please Note: All statutory references in this document, unless otherwise specifically noted are to the **Courts of Justice Act, R.S.O. 1990**, as amended.

### COMPLAINTS

### **GENERALLY**

Any person may make a complaint to the Judicial Council alleging misconduct by a provincially-appointed judge. If an allegation of misconduct is made to a member of the Judicial Council it shall be treated as a complaint made to the Judicial Council. If an allegation of misconduct against a provincially-appointed judge is made to any other judge, or to the Attorney General, the recipient of the complaint shall provide the complainant with information about the Judicial Council and how a complaint is made and shall refer the person to the Judicial Council.

subs. 51.3(1), (2) and (3)

Once a complaint has been made to the Judicial Council, the Judicial Council has carriage of the matter.

subs. 51.3(4)

## COMPLAINT SUBCOMMITTEES

### COMPOSITION

Complaints received by the Judicial Council shall be reviewed by a complaint subcommittee of the Judicial Council which consists of a judge, other than the Chief Justice of the Ontario Court of Justice and a lay member of the OJC (the term "judge" includes a master when a master is the subject of a complaint). Eligible members shall serve on the complaint subcommittees on a rotating basis.

subs. 51.4(1) and (2)

### ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by members of complaint subcommittees and members of review panels can be found at pages 24 - 26 of this document.

### STATUS REPORTS

Each member of a complaint subcommittee is provided with regular status reports, in writing, of the outstanding files that have been assigned to them. These status reports are mailed to each complaint subcommittee member at the beginning of every month. Complaint subcommittee members endeavour to review the status of all files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

## Investigation

### GUIDELINES AND RULES OF PROCEDURE

The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the Statutory Powers Procedure Act.

subs. 51.1(3)

A complaint subcommittee shall follow the Judicial Council's guidelines and rules of procedures established for this purpose by the Judicial Council under subsection 51.5(1) in conducting investigations, making recommendations regarding temporary suspension and/or reassignment, making decisions about a complaint after their investigation is complete and/or in imposing conditions on their decision to refer a complaint to the Chief Justice of the Ontario Court of Justice. The Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the investigation of complaints by complaint subcommittees.

subs. 51.4(21)

# APPENDING B

## ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

### AGREEMENT ON HOW TO PROCEED

Complaint subcommittee members review the file and materials (if any), and discuss same with each other prior to determining the substance of the complaint and prior to deciding what investigatory steps should be taken (ordering transcript, requesting response, etc.). No member of a complaint subcommittee shall take any investigative steps with respect to a complaint that has been assigned to him or her without first discussing the complaint with the other complaint subcommittee member and agreeing on the course of action to be taken. If there is a dispute between the complaint subcommittee members regarding an investigatory step, the matter will be referred to a review panel for its advice and input.

### DISMISSAL OF COMPLAINT

A complaint subcommittee shall dismiss the complaint without further investigation if, in its opinion, it falls outside the Judicial Council's jurisdiction or if it is frivolous or an abuse of process.

subs. 51.4(3)

### CONDUCTING INVESTIGATION

If the complaint is not dismissed, the complaint subcommittee shall conduct such investigation as it considers appropriate. The Judicial Council may engage persons, including counsel, to assist it in its investigation. The investigation shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(4), (5), (6) and (7)

### PREVIOUS COMPLAINTS

A complaint subcommittee confines its investigation to the complaint before it. The issue of what weight, if any, should be given to previous complaints made against a judge who is the subject of another complaint before the OJC, may be considered by the members of the complaint subcommittee where the Registrar, with the assistance of legal counsel (if deemed necessary by the Registrar), first determines that the prior complaint or complaints are strikingly similar in the sense of similar fact evidence and

would assist them in determining whether or not the current incident could be substantiated.

## INFORMATION TO BE OBTAINED BY REGISTRAR

Complaint subcommittee members will endeavour to review and discuss their assigned files and determine whether or not a transcript of evidence and/or a response to a complaint is necessary within a month of receipt of the file. All material (transcripts, audiotapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, on their instruction, and not by individual complaint subcommittee members.

### TRANSCRIPTS, ETC.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved. If a transcript is ordered, court reporters are instructed not to submit the transcript to the subject judge for editing.

### RESPONSE TO COMPLAINT

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the

### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

APPINDIX

complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at the hearing.

#### **GENERALLY**

Transcripts of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless a member advises otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

### ADVICE AND ASSISTANCE

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint. The complaint subcommittee may also consult with members of a Review Panel to seek their input and guidance during the investigative stages of the complaint process.

subs. 51.4(5)

### **MULTIPLE COMPLAINTS**

The Registrar will assign any new complaints of a similar nature against a judge who already has an open complaint file, or files, to the same complaint subcommittee that is/are investigating the outstanding file(s). This will ensure that the complaint subcommittee members who are investigating a complaint against a particular judge are aware of the fact that there is a similar complaint, whether from the same complainant or another individual, against the same judge.

When a judge is the subject of three complaints from three different complainants within a period of three years, the Registrar will bring that fact to the attention of the Judicial Council, or a review panel thereof, for their assessment of whether or not the multiple complaints should be the subject of advice to the judge by the Judicial Council or the Associate Chief Justice or Regional Senior Justice member of the Judicial Council.

## INTERIM RECOMMENDATION TO SUSPEND OR REASSIGN

The complaint subcommittee may recommend to the appropriate Regional Senior Justice that the subject judge be suspended, with pay, or be reassigned to a different location, until the complaint is finally disposed of. If the subject judge is assigned to the region of the Regional Senior Justice who is a member of the Judicial Council, the complaint subcommittee shall recommend the suspension, with pay, or temporary reassignment to another Regional Senior Justice. The Regional Senior Justice in question may suspend or reassign the judge as the complaint subcommittee recommends. The exercise of the Regional Senior Justice's discretion to accept or reject the complaint subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice of the Ontario Court of Justice.

subs. 51.4(8), (9), (10) and (11)

# COMPLAINT AGAINST CHIEF JUSTICE ET AL – INTERIM RECOMMENDATIONS

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

## CRITERIA FOR INTERIM RECOMMENDATIONS TO SUSPEND OR REASSIGN

The Judicial Council has established the following criteria and rules of procedure under subsection 51.1(1) and they are to be used by a complaint subcommittee in making their decision to recommend to the appropriate Regional Senior Justice the

# A D D B S D I E - H

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

temporary suspension or re-assignment of a judge pending the resolution of a complaint:

subs. 51.4(21)

- where the complaint arises out of a working relationship between the complainant and the judge and the complainant and the judge both work at the same court location
- where allowing the judge to continue to preside would likely bring the administration of justice into disrepute
- where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies
- where it is evident to the complaint subcommittee that a judge is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated

# INFORMATION RE: INTERIM RECOMMENDATION

Where a complaint subcommittee recommends temporarily suspending or re-assigning a judge pending the resolution of a complaint, particulars of the factors upon which the complaint subcommittee's recommendations are based shall be provided contemporaneously to the Regional Senior Justice and the subject judge to assist the Regional Senior Justice in making his or her decision and to provide the subject judge with notice of the complaint and the complaint subcommittee's recommendation.

Where a complaint subcommittee or a review panel proposes to recommend temporarily suspending or re-assigning a judge, it may give the judge an opportunity to be heard on that issue in writing by notifying the judge by personal service, if possible, or if not registered mail of the proposed suspension or reassignment, of the reasons therefor, and of the judge's right to tender a response. If no response from the judge is received after 10 days from the date of mailing, the recommendation of an interim suspension or reassignment may proceed.

#### Reports to Review Panels

#### WHEN INVESTIGATION COMPLETE

When its investigation is complete, the complaint subcommittee shall either:

- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice,
- refer the complaint to a mediator, in accordance with criteria established by the Judicial Council pursuant to section 51.1(1), or
- refer the complaint to the Judicial Council, with or without recommending that it hold a hearing.

subs. 51.4(13)

#### GUIDELINES AND RULES OF PROCEDURE

The Regulations Act does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the Statutory Powers Procedure Act.

subs. 51.1(3)

If the complaint is against the Chief Justice of the Ontario Court of Justice, an Associate Chief Justice of the Ontario Court of Justice or the Regional Senior Justice who is a member of the Judicial Council, any recommendation or suspension, with pay, or temporary reassignment shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the complaint subcommittee recommends.

subs. 51.4(12)

#### PROCEDURE TO BE FOLLOWED

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint

# LPPINDIA B

#### ONTARIO IUDICIAL COUNCIL - PROCEDURES DOCUMENT - COMPLAINT SUBCOMMITTEES

subcommittee are ready to be reported to a review panel. The members of the complaint subcommittee will also provide a legible, fully completed copy of the appropriate pages of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration.

At least one member of a complaint subcommittee's shall be present when the complaint subcommittee's report is made to a review panel. Attendance by a complaint subcommittee or review panel member may be by teleconference when necessary.

#### NO IDENTIFYING INFORMATION

The complaint subcommittee shall report its disposition of any complaint that is dismissed or referred to the Chief Justice of the Ontario Court of Justice or to a mediator to the Judicial Council without identifying the complainant or the judge who is the subject of the complaint and no information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

subs. 51.4(16)

#### **DECISION TO BE UNANIMOUS**

The decision by a complaint subcommittee to dismiss a complaint, refer the complaint to the Chief Justice of the Ontario Court of Justice or refer the complaint to a mediator must be a unanimous decision on the part of the complaint subcommittee members. If the complaint subcommittee members cannot agree, the complaint must be referred to the Judicial Council.

subs. 51.4(14)

# CRITERIA FOR DECISIONS BY COMPLAINT SUBCOMMITTEES

#### A) TO DISMISS THE COMPLAINT

A complaint subcommittee will dismiss a complaint after reviewing the complaint if, in the complaint subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process. A complaint subcommittee may also recommend that a complaint be dismissed if, after

their investigation, they conclude that the complaint is unfounded.

subs. 51.4(3) and (13)

#### B) TO REFER TO THE CHIEF JUSTICE

A complaint subcommittee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of the complaint subcommittee, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A complaint subcommittee will impose conditions on their referral to the Chief Justice of the Ontario Court of Justice if, in their opinion, there is some course of action or remedial training of which the subject judge could take advantage and there is agreement by the subject judge.

subs. 51.4 (13) and (15)

#### C) TO REFER TO MEDIATION

A complaint subcommittee will refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the *Courts of Justice Act*. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where both members are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in the *Courts of Justice Act*. Until such time as criteria are established by the Judicial Council, complaints are excluded from the mediation process in the following circumstances:

(1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

#### ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – REVIEW PANELS

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

subs. 51.4(13) and 51.5

#### D) TO RECOMMEND A HEARING

A complaint subcommittee will refer a complaint to the Judicial Council, or a review panel thereof, and recommend that a hearing into a complaint be held where there has been an allegation of judicial misconduct that the complaint subcommittee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct

subs.51.4(13) and (16)

#### RECOMMENDATION RE: HEARING

If a recommendation to hold a hearing is made by the complaint subcommittee it may be made with, or without, a recommendation that the hearing be held in camera and if such recommendation is made, the criteria established by the Judicial Council (see page 11 below) will be used.

#### E) COMPENSATION

The complaint subcommittee's report to the review panel may also deal with the question of compensation of the judge's costs for legal services, if any, incurred during the investigative stage of the process if the complaint subcommittee is of the opinion that the complaint should be dismissed and has so recommended in its report to the Judicial Council. The Judicial Council may then recommend to the Attorney General that the judge's costs for legal services be paid, in accordance with section 51.7 of the *Act*.

subs. 51.7(1)

The decision as to whether or not to recommend compensation of a judge's costs for legal services will be made on a case by case basis.

#### REFERRING COMPLAINT TO COUNCIL

As noted above, a complaint subcommittee may also refer the complaint to the Judicial Council, with or without making a recommendation that it hold a hearing into the complaint. Both members of the complaint subcommittee need not agree with this recommendation and the Judicial Council, or a review panel thereof, has the power to require the complaint subcommittee to refer the complaint to it if it does not approve the complaint subcommittee's recommended disposition or if the complaint subcommittee cannot agree on the disposition. If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council, or a review panel thereof.

subs.51.4(16) and (17)

#### INFORMATION TO BE INCLUDED

Where a complaint is referred to a Review Panel of the Judicial Council by a complaint subcommittee, the complaint subcommittee shall forward to the Review Panel all documents, transcripts, statements, and other evidence considered by it in reviewing the complaint, including the response of the judge about whom the complaint is made, if any. The Review Panel shall consider such information in coming to its conclusion regarding the appropriate disposition of the complaint.

#### REVIEW PANELS

#### **PURPOSE**

The Judicial Council may establish a review panel for the purpose of: -

- considering the report of a complaint subcommittee,
- considering a complaint referred to it by a complaint subcommittee
- · considering a mediator's report
- considering a complaint referred to it out of mediation, and
- considering the question of compensation

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - REVIEW PANELS

and the review panel has all the powers of the Judicial Council for these purposes.

subs. 49(14)

#### COMPOSITION

A review panel is made up of two provincially-appointed judges (other than the Chief Justice of the Ontario Court of Justice), a lawyer and a lay member of the OJC and shall not include either of the two members who served on the complaint subcommittee who investigated the complaint and made the recommendation to the review panel. One of the judges, designated by the Council, shall chair the review panel and four members constitute a quorum. The chair of the review panel is entitled to vote and may cast a second deciding vote if there is a tie.

subs. 49(15),(18) and (19)

#### WHEN REVIEW PANEL FORMED

A review panel is formed to review the decisions made about complaints by complaint subcommittees and dispose of open complaint files at every regularly scheduled meeting of the OJC, if the quorum requirements of the governing legislation can be satisfied.

#### **GUIDELINES AND RULES OF PROCEDURE**

The Regulations Act does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Statutory Powers Procedure Act does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the Statutory Powers Procedure Act.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedure under subsection 51.1(1) with respect to the consideration

of complaint subcommittee reports made to a review panel or referred to it by a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for this purpose.

subs. 51.4(22)

#### Review of Complaint Subcommittee's Report

#### REVIEW IN PRIVATE

The review panel shall consider the complaint subcommittee's report, in private, and may approve its disposition or may require the complaint subcommittee to refer the complaint to the Council in which case the review panel shall consider the complaint, in private.

subs. 51.4(17)

#### PROCEDURE ON REVIEW

The review panel shall examine the letter of complaint, the relevant parts of the transcript (if any), the response from the judge (if any), etc., with all identifying information removed therefrom, as well as the report of the complaint subcommittee, until its members are satisfied that the issues of concern have been identified and addressed by the complaint subcommittee in its investigation of the complaint and in its recommendation(s) to the review panel about the disposition of the complaint.

A review panel may reserve its decision on a complaint subcommittee's recommendation and may adjourn from time to time to consider its decision or direct the complaint subcommittee to conduct further investigation and report back to the review panel.

If the members of the review panel are not satisfied with the report of the complaint subcommittee, they may refer the complaint back to the complaint subcommittee for further investigation or make any other direction or request of the complaint subcommittee that they deem to be appropriate.

If it is necessary to hold a vote on whether or not to accept the recommendation of a complaint subcommittee, and there is a tie, the chair will cast a second and deciding vote.

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - REVIEW PANELS

#### Referral of Complaint to a Review Panel

#### WHEN REFERRED

When a complaint subcommittee submits its report to a review panel, the review panel may approve the complaint subcommittee's disposition or require the complaint subcommittee to refer the complaint to it to consider. The members of a review panel will require a complaint subcommittee to refer the complaint to them in circumstances where the members of the complaint subcommittee cannot agree on the recommended disposition of the complaint or where the recommended disposition of the complaint is unacceptable to a majority of the members of the review panel.

subs. 51.4(13), (14) and (17)

#### POWER OF A REVIEW PANEL ON REFERRAL

If a complaint is referred to it by a complaint subcommittee or a review panel requires a complaint subcommittee to refer a complaint to it to consider, the complainant and the subject judge may be identified to the members of the review panel who shall consider the complaint, in private, and may: —

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Justice of the Ontario Court of Justice (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(16) and (18)

#### **GUIDELINES AND RULES OF PROCEDURE**

The Regulations Act does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Statutory Powers Procedure Act does not apply to the Judicial Council's activities, or a review panel thereof, in considering a complaint subcommittee's report or in reviewing a complaint referred to it by a complaint subcommittee.

subs. 51.4(19)

The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the Statutory Powers Procedure Act.

subs. 51.1(3)

The Ontario Judicial Council has established the following guidelines and rules of procedures under subsection 51.1(1) with respect to the consideration of complaints that are referred to it by a complaint subcommittee or in consideration of complaints that it causes to be referred to it from a complaint subcommittee and the Judicial Council, or a review panel thereof, shall follow its guidelines and rules of procedure established for the purpose.

subs. 51.4(22)

#### Guidelines re: Dispositions

#### A) ORDERING A HEARING

A review panel will order a hearing be held in circumstances where the majority of members of the review panel are of the opinion that there has been an allegation of judicial misconduct which the majority of the members of the review panel believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. The recommendation to hold a hearing made by the review panel may be made with, or without, a recommendation that the hearing be held *in camera* and if such recommendation is made, the criteria established by the Judicial Council (see page 18 below) will be used.

#### B) DISMISSING A COMPLAINT

A review panel will dismiss a complaint in circumstances where the majority of members of the review panel are of the opinion that the allegation of judicial misconduct falls outside the jurisdiction of the Judicial Council, is frivolous or an abuse of process, or where the review panel is of the view that, the complaint is unfounded. A review panel will not generally dismiss as unfounded a complaint unless it is satisfied that there is no basis in fact for the allegations against the provincially-appointed judge.

# APPENDIS B

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - REVIEW PANELS

# C) REFERRING A COMPLAINT TO THE CHIEF JUSTICE

A review panel will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the majority of members of the review panel are of the opinion that the conduct complained of does not warrant another disposition and there is some merit to the complaint and the disposition is, in the opinion of the majority of members of the review panel, a suitable means of informing the judge that his/her course of conduct was not appropriate in the circumstances that led to the complaint. A review panel will recommend imposing conditions on their referral of a complaint to the Chief Justice of the Ontario Court of Justice where a majority of the members of a review panel agree that there is some course of action or remedial training of which the subject judge can take advantage of and there is agreement by the judge in accordance with subs. 51.4(15). The Chief Justice of the Ontario Court of Justice will provide a written report on the disposition of the complaint to the review panel and complaint subcommittee members.

#### D) REFERRING A COMPLAINT TO MEDIATION

A review panel may refer a complaint to mediation when the Judicial Council has established a mediation process for complainants and judges who are the subject of complaints, in accordance with section 51.5 of the Courts of Justice Act. When such a mediation process is established by the Judicial Council, complaints may be referred to mediation in circumstances where a majority of the members of the review panel are of the opinion that the conduct complained of does not fall within the criteria established to exclude complaints that are inappropriate for mediation, as set out in subsection 51.5(3) of the Courts of Justice Act. Until such time as criteria are established, complaints are excluded from the mediation process in the following circumstances:

(1) where there is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable;

- (2) where the complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*; or
- (3) where the public interest requires a hearing of the complaint.

#### Notice of Decision

#### **DECISION COMMUNICATED**

The Judicial Council, or a review panel thereof, shall communicate its decision to both the complainant and the subject judge and if the Judicial Council decides to dismiss the complaint, it will provide the parties with brief reasons.

subs. 51.4(20)

#### ADMINISTRATIVE PROCEDURES

Detailed information on administrative procedures to be followed by the Judicial Council when notifying the parties of its decision can be found at pages 25 and 26 of this document.

#### HEARING PANELS

#### APPLICABLE LEGISLATION

All hearings held by the Judicial Council are to be held in accordance with section 51.6 of the *Courts of Justice Act*.

The Regulations Act does not apply to rules, guidelines or criteria established by the Judicial Council.

subs. 51.1(2)

The Statutory Powers Procedure Act applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1) S.P.P.A.). The Judicial Council's rules do not have to be approved by the Statutory Powers Procedure Rules Committee as required by sections 28, 29 and 33 of the Statutory Powers Procedure Act.

subs. 51.1(3) and 51.6(2)

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - HEARINGS

The Judicial Council's rules of procedure established under subsection 51.1(1) apply to a hearing held by the Judicial Council.

subs. 51.6(3)

#### COMPOSITION

The following rules apply to a hearing panel established for the purpose of holding a hearing under section 51.6 (adjudication by the Ontario Judicial Council) or section 51.7 (considering the question of compensation):

- 1) half the members of the panel, including the chair, must be judges and half of the members of the panel must be persons who are not judges
- 2) at least one member must be a person who is neither a judge nor a lawyer
- 3) the Chief Justice of Ontario, or another judge of the Ontario Court of Appeal designated by the Chief Justice, shall chair the hearing panel
- 4) the Judicial Council may determine the size and composition of the panel, subject to paragraphs 1, 2 & 3 above
- 5) all the members of the hearing panel constitute a quorum (subs. 49(17))
- 6) the chair of the hearing panel is entitled to vote and may cast a second deciding vote if there is a tie
- 7) the members of the complaint subcommittee that investigated the complaint shall not participate in a hearing of the complaint
- 8) the members of a review panel that received and considered the recommendation of a complaint subcommittee shall not participate in a hearing of the complaint (subs. 49(20))

subs. 49(17), (18), (19) and (20)

#### **POWER**

A hearing panel established by the Judicial Council for the purposes of section 51.6 or 51.7 has all the powers of the Judicial Council for that purpose.

subs. 49(16)

#### **HEARINGS**

#### COMMUNICATION BY MEMBERS

Members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate. This prohibition on communication does not preclude the Judicial Council from engaging legal counsel to assist it and, in that case, the nature of the advice given by counsel shall be communicated to the parties so that they may makes submissions as to the law.

subs. 51.6(4) and (5)

#### PARTIES TO THE HEARING

The Judicial Council shall determine who are the parties to the hearing.

subs. 51.6(6)

#### PUBLIC OR PRIVATE/ALL OR PART

Judicial Council hearings into complaints and meetings to consider the question of compensation shall be open to the public unless the hearing panel determines, in accordance with criteria established under section 51.1(1) by the Judicial Council, that exceptional circumstances exist and the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality in which case it may hold all or part of a hearing in private.

subs. 49(11) and 51.6(7)

The Statutory Powers Procedure Act applies to any hearing by the Judicial Council, except for its provisions with respect to disposition of proceedings without a hearing (section 4, S.P.P.A.) or its provisions for public hearings (subs. 9(1), S.P.P.A.).

subs. 51.6(2)

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#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - HEARINGS

If a complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of the complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

subs. 51.6(9)

#### OPEN OR CLOSED HEARINGS - CRITERIA

The Judicial Council has established the following criteria under subsection 51.1(1) to assist it in determining whether or not the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality. If the Judicial Council determines that exceptional circumstances exist in accordance with the following criteria, it may hold all, or part, of the hearing in private.

subs. 51.6(7)

The members of the Judicial Council will consider the following criteria to determine what exceptional circumstances must exist before a decision is made to maintain confidentiality and hold all, or part, of a hearing in private:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

# REVEALING JUDGE'S NAME WHEN HEARING WAS PRIVATE – CRITERIA

If a hearing was held in private, the Judicial Council shall order that the judge's name not be disclosed or made public unless it determines, in accordance with the criteria established under subsection 51.1(1), that there are exceptional circumstances.

subs. 51.6(8)

The members of the Judicial Council will consider the following criteria before a decision is made about when it is appropriate to publicly reveal the name of a judge even though the hearing has been held in private:

- a) at the request of the judge, or
- b) in circumstances where it would be in the public interest to do so.

#### WHEN AN ORDER PROHIBITING PUBLICATION OF JUDGE'S NAME MAY BE MADE, PENDING THE DISPOSITION OF A COMPLAINT – CRITERIA

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

The members of the Judicial Council will consider the following criteria to determine when the Judicial Council may make an order prohibiting the publication of information that might identify the judge who is the subject of a complaint, pending the disposition of a complaint:

- a) where matters involving public security may be disclosed, or
- b) where intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public.

#### **NEW COMPLAINT**

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Judicial Council, would constitute an allegation of misconduct against a provincially-appointed judge outside of the ambit of the complaint which is the subject of the hearing, the Registrar shall prepare a summary of the particulars of the complaint and forward

# APPLS DIE-H

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - PROCEDURAL CODE FOR HEARINGS

same to a complaint subcommittee of the Judicial Council to be processed as an original complaint. The Complaint subcommittee shall be composed of members of the Judicial Council other than those who compose the panel hearing the complaint.

#### PROCEDURAL CODE FOR HEARINGS

#### **PREAMBLE**

These Rules of Procedure apply to all hearings of the Judicial Council convened pursuant to section 51.6 of the *Courts of Justice Act* and are established and made public pursuant to paragraph 51.1(1)6 of the *Courts of Justice Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

#### INTERPRETATION

- 1. The words in this code shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Courts of Justice Act*.
  - (1) In this code,
    - (a) "Act" shall mean the Courts of Justice Act, R.S.O. 1990, c. C. 43, as amended.
    - (b) "Panel" means the Panel conducting a hearing and established pursuant to subsection 49(16) of the *Act*.
    - (c) "Respondent" shall mean a judge in respect of whom an order for a hearing is made pursuant to subsection 51.4(18)(a) of the *Act*.
    - (d) "Presenting Counsel" means counsel engaged on behalf of the Council to prepare and present the case against a Respondent.

#### PRESENTATION OF COMPLAINTS

2. The Council shall, on the making of an order for a hearing in respect of a complaint against a

- judge, engage Legal Counsel for the purposes of preparing and presenting the case against the Respondent.
- 3. Legal Counsel engaged by the Council shall operate independently of the Council.
- 4. The duty of Legal Counsel engaged under this Part shall not be to seek a particular order against a Respondent, but to see that the complaint against the judge is evaluated fairly and dispassionately to the end of achieving a just result.
- 5. For greater certainty, Presenting Counsel are not to advise the Council on any matters coming before it. All communications between Presenting Counsel and the Council shall, where communications are personal, be made in the presence of counsel for the Respondent, and in the case of written communications, such communications shall be copied to the Respondents.
- 6. A hearing shall be commenced by a Notice of Hearing in accordance with this Part.
- 7. Presenting Counsel shall prepare the Notice of Hearing.
  - (1) The Notice of Hearing shall contain,
    - (a) particulars of the allegations against the Respondent;
    - (b) a reference to the statutory authority under which the hearing will be held;
    - (c) a statement of the time and place of the commencement of the hearing;
    - (d) a statement of the purpose of the hearing;
    - (e) a statement that if the Respondent does not attend at the hearing, the Panel may proceed in the Respondent's absence and the Respondent will not be entitled to any further notice of the proceeding; and,
- 8. Presenting Counsel shall cause the Notice of Hearing to be served upon the Respondent by personal service or, upon motion to the Panel hearing the complaint, an alternative to personal service and shall file proof of service with the Council.

ONTARIO IUDICIAL COUNCIL - PROCEDURES DOCUMENT - PROCEDURAL CODE FOR HEARINGS

#### **RESPONSE**

- 9. The Respondent may serve on Presenting Counsel and file with the Council a Response to the allegations in the Notice Hearing.
  - (1) The Response may contain full particulars of the facts on which the Respondent relies.
  - (2) A Respondent may at any time before or during the hearing serve on Presenting Counsel and file with the Council an amended Response.
  - (3) Failure to file a response shall not be deemed to be an admission of any allegations against the Respondent.

#### DISCLOSURE

- 10. Presenting Counsel shall, before the hearing, forward to the Respondent or to counsel for the Respondent names and addresses of all witnesses known to have knowledge of the relevant facts and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
- 11. Presenting Counsel shall also provide, prior to the hearing, all non-privileged documents in its possession relevant to the allegations in the Notice of Hearing.
- 12. The Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided the Respondent with the witness's name and address, if available, and any statements taken from the witness and summaries of any interviews with the witness before the hearing.
- 13. Part V applies, *mutatis mutandis*, to any information which comes to Presenting Counsel's attention after disclosure has been made pursuant to that Part.

#### PRE-HEARING CONFERENCE

14. The Panel may order that a pre-hearing conference take place before a judge who is a member of the Council but who is not a member of the Panel to hear the allegations against the Respondent, for the purposes of narrowing the issues and promoting settlement.

#### THE HEARING

- 15. For greater certainty, the Respondent has the right to be represented by counsel, or to act on his own behalf in any hearing under this Code.
- 16. The Panel, on application at any time by Presenting Counsel or by the Respondent, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the Panel which are relevant to the subject matter of the hearing and admissible at the hearing.
  - (1) A summons issued under this section shall be in the form prescribed by subsection 12(2) of the *Statutory Powers Procedure Act*.
- 17. The hearing shall be conducted by a Panel of members of the Council composed of members who have not participated in a complaint subcommittee investigation of the complaint or in a Panel reviewing a report from such complaint sub-committee.
  - (1) The following guidelines apply to the conduct of the hearing, unless the Panel, on motion by another party, or on consent requires otherwise.
    - (a) All testimony shall be under oath or affirmation or promise.
    - (b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
    - (c) Counsel for the Respondent may make an opening statement, either immediately following Presenting Counsel's opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the Respondent has made an opening statement, the Respondent may present evidence.
    - (d) All witnesses may be cross-examined by counsel for the opposite party and re-examined as required.

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - POST-HEARINGS

- (e) The hearing shall be recorded verbatim and transcribed where requested. Where counsel for the Respondent requests, he or she may be provided with a transcript of the hearing within a reasonable time and at no cost.
- (f) Both Presenting Counsel and the Respondent may submit to the Panel proposed findings, conclusions, recommendations or draft orders for the consideration of the Hearing Panel.
- (g) Presenting Counsel and counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, in the order to be determined by the Hearing Panel.

#### PRE-HEARING RULINGS

- 18. Either party to the hearing may, by motion, not later than 10 days before the date set for commencement of the hearing, bring any procedural or other matters to the Hearing Panel as are required to be determined prior to the hearing of the complaint.
  - (1) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:
    - (a) objecting to the jurisdiction of the Council to hear the complaint;
    - (b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the Panel;
    - (c) objecting to the sufficiency of disclosure by Presenting Counsel;
    - (d) determining any point of law for the purposes of expediting the hearing; or
    - (e) determining any claim of privilege in respect of the evidence to be presented at the hearing; or
    - (f) any matters relating to scheduling.

- (2) A motion seeking any of the relief enumerated in this section may not be brought during the hearing, without leave of the Hearing Panel, unless it is based upon the manner in which the hearing has been conducted.
- (3) The Hearing Panel, may, on such grounds as it deems appropriate, abridge the time for bringing any motion provided for by the prehearing rules.
- 19. The Council shall, as soon as is reasonably possible, appoint a time and a place for the hearing of submissions by both sides on any motion brought pursuant to subsection 19(1), and shall, as soon as is reasonably possible, render a decision thereon.

#### POST-HEARINGS

#### Disposition at Hearing

#### **DISPOSITION**

After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may

- a) warn the judge;
- b) reprimand the judge;
- c) order the judge to apologize to the complainant or to any other person;
- d) order the judge to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a judge;
- e) suspend the judge with pay, for any period;
- f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the judge be removed from office (in accordance with section 51.8).

subs. 51.6(11)

#### **COMBINATION OF SANCTIONS**

The Judicial Council may adopt any combination of the foregoing sanctions except that the recommendation to the Attorney General that the judge be removed from office will not be combined with any other sanction.

subs. 51.6(12)

#### Report to Attorney General

#### REPORT

The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition (subject to any orders made about confidentiality of documents by the Judicial Council) and the Attorney General may make the report public if he/she is of the opinion this would be in the public interest.

subs. 51.6(18)

#### **IDENTITY WITHHELD**

If a complainant or witness asked that their identity be withheld during the hearing and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with the criteria established by the Judicial Council under subsection 51.6(8) (please see page B – 11 above).

subs. 51.6(19)

#### JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council (please see page B - 11 above) and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

#### Order to Accommodate

If the effect of a disability on the judge's performance of the essential duties of judicial office is a factor in a complaint, which is either dismissed or disposed of in any manner short of recommending to the Attorney General that the judge be removed, and the judge would be able to perform the essential duties of judicial office if his or her needs were accommodated, the Judicial Council shall order the judge's needs to be accommodated to the extent necessary to enable him or her to perform those duties.

Such an order to accommodate may not be made if the Judicial Council is satisfied that making the order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

The Judicial Council shall also not make an order to accommodate against a person without ensuring that the person has had an opportunity to participate and make submissions.

An order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 51.6(13), (14), (15), (16) and (17)

#### Removal from Office

REMOVAL

A provincially-appointed judge may be removed from office only if:

- a) a complaint about the judge has been made to the Judicial Council; and
- b) the Judicial Council, after a hearing, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undu

# ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – COMPENSATION

hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),

- (ii) conduct that is incompatible with the due execution of his or her office, or
- (iii) failure to perform the duties of his or her office.

subs. 51.8(1)

#### TABLING OF RECOMMENDATION

The Attorney General shall table the Judicial Council's recommendation in the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of its next session.

subs. 51.8(2)

#### ORDER REMOVING JUDGE

An order removing a provincially-appointed judge from office may be made by the Lieutenant Governor on the address of the Legislative Assembly.

subs. 51.8(3)

#### **APPLICATION**

This section applies to provincially-appointed judges who have not yet attained retirement age and to provincially-appointed judges whose continuation in office after attaining retirement age has been approved by the Chief Justice of the Ontario Court of Justice. This section also applies to a Chief, or Associate Chief Justice who has been continued in office by the Judicial Council, either as a Chief, or Associate Chief Justice of the Ontario Court of Justice, or who has been continued in office as a judge by the Judicial Council.

subs. 51.8(4)

#### COMPENSATION

#### AFTER COMPLAINT DISPOSED OF

When the Judicial Council has dealt with a complaint against a provincially-appointed judge, it shall consider whether the judge should be compensated for all or part of his or her costs for legal services incurred in connection with the steps taken in relation to the complaint, including review and investigation of a

complaint by a complaint subcommittee, review of a complaint subcommittee's report by the Judicial Council, or a review panel thereof, review of a mediator's report by the Judicial Council, or a review panel thereof, the hearing into a complaint by the Judicial Council, or a hearing panel thereof, and legal services incurred in connection with the question of compensation. The Judicial Council's consideration of the question of compensation shall be combined with a hearing into a complaint, if one is held.

subs. 51.7(1) and (2)

#### PUBLIC OR PRIVATE

If a hearing was held and was public, the consideration of the compensation question shall be public; otherwise, the consideration of the question of compensation shall take place in private.

subs. 51.7(3)

#### RECOMMENDATION

If the Judicial Council is of the opinion that the judge should be compensated, it shall make such a recommendation to the Attorney General, indicating the amount of compensation.

subs. 51.7(4)

# WHERE COMPLAINT DISMISSED AFTER A HEARING

If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount of compensation.

subs. 51.7(5)

#### DISCLOSURE OF NAME

The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the judge's name unless there was a public hearing into the complaint or the Judicial Council has otherwise made the judge's name public.

subs. 51.7(6)

# A DEPT NOTE A

# ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

#### AMOUNT AND PAYMENT

The amount of compensation recommended to be paid may relate to all, or part, of the judge's costs for legal services and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. The Attorney General shall pay compensation to the judge in accordance with the recommendation.

subs. 51.7(7) and (8)

# CONFIDENTIALITY AND PROTECTION OF PRIVACY

#### INFORMATION TO PUBLIC

At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

subs. 51.3(5)

#### POLICY OF JUDICIAL COUNCIL

The complaint subcommittee's investigation into a complaint shall be conducted in private, and its report about a complaint or referral of a complaint to the Judicial Council, or a review panel thereof, is considered in private, in accordance with subsections 51.4(6) and 51.4(17) and (18). It is the policy of the Judicial Council, made pursuant to subsections 51.4(21) and (22), that it will not confirm or deny that a particular complaint has been made to it, as permitted by subsection 51.3(5), unless the Judicial Council, or a hearing panel thereof, has determined that there will be a public hearing into the complaint.

# COMPLAINT SUBCOMMITTEE INVESTIGATION PRIVATE

The investigation into a complaint by a complaint subcommittee shall be conducted in private. The *Statutory Powers Procedure Act* does not apply to the complaint subcommittee's activities in investigating a complaint.

subs. 51.4(6) and (7)

#### REVIEW PANEL DELIBERATION PRIVATE

The Judicial Council, or a review panel thereof, shall: -

- consider the complaint subcommittee's report, in private, and may approve its disposition, or
- may require the complaint subcommittee to refer the complaint to the Council.

subs. 51.4(17)

If a complaint is referred to it by a complaint subcommittee, the Judicial Council, or a Review Panel thereof, shall consider such complaint, in private, and may:

- decide to hold a hearing,
- dismiss the complaint,
- refer the complaint to the Chief Judge (with or without imposing conditions), or
- refer the complaint to a mediator.

subs. 51.4(18)

# WHEN IDENTITY OF JUDGE REVEALED TO REVIEW PANEL

If a complaint is referred to the Judicial Council, with or without a recommendation that a hearing be held, the complainant and the subject judge may be identified to the Judicial Council or a review panel thereof, and such a complaint will be considered in private.

subs.51.4(16) and (17)

#### **HEARINGS MAY BE PRIVATE**

If the Judicial Council determines, in accordance with criteria established under subsection 51.1(1) that the desirability of holding an open hearing is outweighed by the desirability of maintaining confidentiality, it may hold all or part of a hearing in private.

subs. 51.6(7)

#### JUDGE'S NAME NOT DISCLOSED

If a hearing is held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1(1) that there are exceptional circumstances, order the judge's name not be disclosed or made public.

subs. 51.6(8)

# ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – CONFIDENTIALITY AND PROTECTION OF PRIVACY

#### ORDER PROHIBITING PUBLICATION

In exceptional circumstances, and in accordance with criteria established under subsection 51.1(1), the Judicial Council may make an order prohibiting the publication of information that might identify the subject judge, pending the disposition of a complaint.

subs. 51.6(10)

#### CRITERIA ESTABLISHED

For the criteria established by the Judicial Council under subsection 51.1(1) with respect to subsections 51.6(7), (8) and (10), please see page B – 11 above.

#### REPORT TO ATTORNEY GENERAL

If a complainant or witness asked that their identity be withheld during the hearing, and an order was made under subsection 51.6(9), the report to the Attorney General will not identify them or, if the hearing was held in private, the report will not identify the judge, unless the Judicial Council orders the judge's name be disclosed in the report in accordance with criteria established under subsection 51.6(8).

subs. 51.6(19)

#### JUDGE NOT TO BE IDENTIFIED

If, during the course of a hearing into a complaint, the Judicial Council made an order prohibiting publication of information that might identify the judge complained-of pending the disposition of the complaint, pursuant to subsection 51.6(10) and the criteria established by the Judicial Council and the Judicial Council subsequently dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report to the Attorney General without his or her consent and the Judicial Council shall order that information that relates to the complaint and which might identify the judge shall never be made public without his or her consent.

subs. 51.6(20)

#### ORDER NOT TO DISCLOSE

The Judicial Council or a complaint subcommittee may order that any information or documents relating

to a mediation or a Judicial Council meeting or hearing that was not held in public, whether the information or documents are in the possession of the Judicial Council or of the Attorney General, or of any other person, are confidential and shall not be disclosed or made public.

subs. 49(24) and (25)

#### **EXCEPTION**

The foregoing does not apply to information and documents that the *Courts of Justice Act* requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purpose of mediation or a Judicial Council meeting or hearing.

subs. 49(26)

#### AMENDMENTS TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

Section 65 of the Freedom of Information and Protection of Privacy Act is amended by adding the following subsections:

- (4) This *Act* does not apply to anything contained in a judge's performance evaluation under section 51.11 of the *Courts of Justice Act* or to any information collected in connection with the evaluation.
- (5) This *Act* does not apply to a record of the Ontario Judicial Council, whether in the possession of the Judicial Council or of the Attorney General, if any of the following conditions apply:
- 1. The Judicial Council or its complaint subcommittee has ordered that the record or information in the record not be disclosed or made public.
- 2. The Judicial Council has otherwise determined that the record is confidential.
- 3. The record was prepared in connection with a meeting or hearing of the Judicial Council that was not open to the public.

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ACCOMMODATION OF DISABILITIES

# ACCOMMODATION OF DISABILITIES

#### APPLICATION FOR ORDER

A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order that such needs be accommodated.

subs. 45.(1)

#### **DUTY OF JUDICIAL COUNCIL**

If the Judicial Council finds that a judge is unable, because of a disability, to perform the essential duties of office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 45.(2)

#### **UNDUE HARDSHIP**

Subsection 45.(2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

subs. 45.(3)

#### **GUIDELINES AND RULES OF PROCEDURE**

In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedures established under subsection 51.1(1).

subs. 45.4(4)

#### OPPORTUNITY TO PARTICIPATE

The Judicial Council will not make an order to accommodate against a person under subsection 45.(2) without ensuring that the person has had an opportunity to participate and make submissions.

subs. 45.(5)

#### ORDER BINDS THE CROWN

The order made by the Judicial Council to accommodate a judge's needs binds the Crown.

subs. 45.(6)

#### CHAIR FOR MEETING

The Chief Justice of Ontario, or designate from the Court of Appeal, shall chair meetings held for the purposes of ordering accommodation.

subs. 49.(8)

#### CHAIR ENTITLED TO VOTE

The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

subs. 49.(10)

#### QUORUM FOR MEETING

Eight members of the Judicial Council, including the chair, constitute a quorum for the purposes of dealing with an application for accommodation of disabilities. At least half the members present must be judges and at least four members present must be persons who are not judges.

subs. 49.(13)

#### EXPERT ASSISTANCE

The Judicial Council may engage persons, including counsel, to assist it.

subs. 49.(21)

#### **CONFIDENTIAL RECORDS**

The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public. An order of non-disclosure may be made whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person. An order of non-disclosure cannot be made with respect to information and/or documents that the *Courts of Justice Act* 

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ACCOMMODATION OF DISABILITIES

requires the Judicial Council to disclose or that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

subs. 49(24)(25) & (26)

The Judicial Council shall establish and make public rules governing its own procedures, including guidelines and rules of procedure for the purpose of the accommodation of disabilities.

subs. 51.1(1)

# ACCOMMODATION ORDER AFTER A HEARING

If, after a hearing into a complaint has been held, the Judicial Council finds that the judge who was the subject of the complaint is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

subs. 51.6(13)

#### RULES OF PROCEDURE AND GUIDELINES

The following are the rules of procedure and guidelines established by the Ontario Judicial Council for the purpose of the accommodation of disabilities.

#### APPLICATION IN WRITING

An application for accommodation of disability by a judge shall be in writing and shall include the following information: -

- a description of the disability to be accommodated;
- a description of the essential duties of the judge's office for which accommodation is required;
- a description of the item and/or service required to accommodate the judge's disability;
- a signed letter from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the judge's application for accommodation;
- the application and supporting materials are inadmissible, without the consent of the appli-

- cant, in any investigation or hearing, other than the hearing to consider the question of accommodation:
- disclosure of the application and supporting materials by the Ontario Judicial Council to the public is prohibited without the consent of the applicant.

#### **ACCOMMODATION SUBCOMMITTEE**

On receipt of an application, the Council will convene a subcommittee of the Council composed of one judge and one lay member of the Council (an "accommodation subcommittee"). At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such experts and advice as may be required, to formulate and report an opinion to the Council in relation to the following matters:

- the period of time that the item and/or service would be required to accommodate the judge's disability;
- the approximate cost of the item and/or service required to accommodate the judge's disability for the length of time the item and/or service is estimated to be required (i.e., daily, weekly, monthly, yearly).

#### REPORT OF ACCOMMODATION SUBCOMMITTEE

The report to the Council shall consist of all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Council in its report.

# INITIAL CONSIDERATION OF APPLICATION AND REPORT

The Judicial Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives

# SUBJECT NOTES B

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ACCOMMODATION OF DISABILITIES

rise to an obligation under the statute to accommodate the applicant short of undue hardship.

# THRESHOLD TEST FOR QUALIFICATION AS DISABILITY

The Judicial Council will be guided generally by Human Rights jurisprudence relating to the definition of "disability" for the purposes of determining whether an order to accommodate is warranted.

The Judicial Council will consider a condition to amount to a disability where it may interfere with the Judge's ability to perform the essential functions of a judge's office.

#### NOTIFICATION OF MINISTER

If the Judicial Council is satisfied that the condition meets the threshold test for qualification as a disability and if the Judicial Council is considering making an order to accommodate same, then the Judicial Council shall provide a copy of the application for accommodation of disability together with the report of the accommodation subcommittee to the Attorney General, at its earliest convenience. The report of the accommodation subcommittee shall include all of the evidence considered by the accommodation subcommittee in formulating its view as to the costs of accommodating the applicant.

#### SUBMISSIONS ON UNDUE HARDSHIP

The Judicial Council will invite the Minister to make submissions, in writing, as to whether or not any order that the Council is considering making to accommodate a judge's disability will cause "undue hardship" to the Ministry of the Attorney General or any other person affected by the said order to accommodate. The Judicial Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.

In considering whether accommodation of the applicant will cause undue hardship, the Council will generally be guided by Human Rights jurisprudence relating to the question whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

#### TIME FRAME FOR RESPONSE

The Judicial Council shall request that the Minister respond to its notice of the judge's application for accommodation within thirty (30) calendar days of the date of receipt of notification from the Judicial Council. The Minister will, within that time frame, advise the Judicial Council whether or not the Minister intends to make any response to the application for accommodation. If the Minister does intend to respond, such response shall be made within sixty (60) days of the Minister's acknowledgement of the notice and advice that the Minister intends to respond. The Judicial Council will stipulate in its notice to the Minister that an order to accommodate will be made in accordance with the judge's application and the Judicial Council's initial determination in the absence of any submission or acknowledgement from the Minister.

# MEETING TO DETERMINE ORDER TO ACCOMMODATE

After receipt of the Minister's submissions with respect to "undue hardship" or the expiration of the time period specified in its notice to the Minister, whichever comes first, the Ontario Judicial Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the judge's disability. The Judicial Council will consider the judge's application and supporting material and submissions made, if any, regarding the question of "undue hardship", before making its determination.

#### COPY OF ORDER

A copy of the order made by the Judicial Council to accommodate a judge's disability shall be provided to the judge and to any other person affected by the said order within ten (10) calendar days of the date of the decision being made.

# ONTARIO JUDICIAL COUNCIL – PROCEDURES DOCUMENT – SPECIAL CONSIDERATIONS

#### SPECIAL CONSIDERATIONS

#### FRENCH-SPEAKING COMPLAINANTS/IUDGES

Complaints against provincially-appointed judges may be made in English or French.

subs. 51.2(2)

A hearing into a complaint by the Judicial Council shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request, to be given before the hearing, French translations of documents that are written in English and are to be considered at the hearing; to be provided with the assistance of an interpreter at the hearing; and to be provided with simultaneous interpretation into French of the English portions of the hearing.

subs. 51.2(3)

This entitlement to translation and interpretation extends to mediation and to the consideration of the question of compensation, if any.

subs. 51.2(4)

The Judicial Council may direct that a hearing or mediation of a complaint where a complainant or witness speaks French, or the complained-of judge speaks French, be conducted bilingually, if the Judicial Council is of the opinion that it can be properly conducted in that manner.

subs. 51.2(5)

A directive under subsection (5) may apply to a part of the hearing or mediation and, in that case, subsections (7) and (8) below apply with necessary modifications.

subs. 51.2(6)

In a bilingual hearing or mediation,

- a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- b) documents may be filed in either language;
- c) in the case of a mediation, discussions may take place in either language;

d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

subs. 51.2(7)

In a bilingual hearing or mediation, if the complainant or the judge complained-of does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

subs. 51.2(8)

#### COMPLAINTS AGAINST CHIEF JUSTICE ET AL

If the Chief Justice of the Ontario Court of Justice is the subject of a complaint, the Chief Justice of Ontario shall appoint another judge of the Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice until the complaint is finally disposed of. The Associate Chief Justice appointed to the Judicial Council shall chair meetings and hearings of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice and appoint temporary members of the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(a) and (b)

Any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice (by a complaint subcommittee after its investigation, by the Judicial Council or a review panel thereof after its review of a complaint subcommittee's report or referral or by the Judicial Council after mediation), shall be made to the Chief Justice of the Superior Court of Justice instead of the Chief Justice of the Ontario Court of Justice, until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(1)(c)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, any complaints that would other-

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - SPECIAL CONSIDERATIONS

wise be referred to the Chief Justice of the Ontario Court of Justice shall be referred to the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(a)

If the Chief Justice of the Ontario Court of Justice is suspended pending final disposition of the complaint against him or her, annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice appointed to the Judicial Council until the complaint against the Chief Justice of the Ontario Court of Justice is finally disposed of.

subs. 50(2)(b)

If either the Associate Chief Justice or Regional Senior Justice appointed to the Judicial Council is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or Regional Senior Justice, as the case may be, until the complaint against the Associate Chief Justice, or Regional Senior Justice appointed to the Judicial Council, is finally disposed of.

subs. 50(3)

# COMPLAINTS AGAINST SMALL CLAIMS COURT JUDGES

Subsection 87.1(1) of the *Courts of Justice Act* applies to provincially-appointed judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, with special provisions.

#### **COMPLAINTS**

When the Judicial Council deals with a complaint against a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990, the following special provisions apply:

1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced

by a provincially-appointed judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.

- 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
- Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

subs. 87.1(4)

#### **COMPLAINTS AGAINST MASTERS**

Subsection 87.(3) of the *Courts of Justice Act* states that sections 44 to 51.12 applies to masters, with necessary modifications, in the same manner as to provincially-appointed judges.

#### **COMPLAINTS**

When the Judicial Council deals with a complaint against a master, the following special provisions apply:

- 1. One of the members of the Judicial Council who is a provincially-appointed judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
- 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice, rather than to the Chief Justice of the Ontario Court of Justice.
- 3. Complaint subcommittee recommendations with respect to interim suspension shall be made to the appropriate Regional Senior Justice of the Superior Court of Justice, to whom subsections 51.4(10) and (11) apply, with necessary modifications.

### APPENDIX B

ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ADMINISTRATIVE MATTERS

#### ADMINISTRATIVE MATTERS

#### INTAKE/OPENING COMPLAINT FILES:

- Where a complaint is made orally by a person intending to make a complaint to the Judicial Council or a member acting in their capacity as a member of the Judicial Council thereof, the person making the allegation shall be encouraged to make the complaint in writing. If such person does not within 10 days of making the allegation tender a written complaint to the Council, the Registrar shall, on consultation with legal counsel and the Judicial Council member to whom the allegation was made, set out the particulars of the complaint in writing. Such written summary of the allegation shall be forwarded by registered mail to the person making the allegation, if he or she can be located, along with a statement that the allegation as summarized will become the complaint on the basis of which the conduct of the provinciallyappointed judge in question will be evaluated. On the tenth day after the mailing of such summary, and in the absence of any response from the person making the allegation, the written summary shall be deemed to be a complaint alleging misconduct against the provincially-appointed judge in question.
- if the complaint is within the jurisdiction of the OJC (any provincially-appointed judge or master full-time or part-time) a complaint file is opened and assigned to a two-member complaint subcommittee for review and investigation (complaints that are outside the jurisdiction of the OJC are referred to the appropriate agency)
- the Registrar will review each letter of complaint upon receipt and if it is determined that a file will be opened and assigned, the Registrar will determine whether or not it is necessary to order a transcript and/or audiotape for review by the complaint subcommittee and, if so, will direct the Assistant Registrar to order same.
- the complaint is added to the tracking form, a sequential file number is assigned, a letter of acknowledgement is sent to the complainant within a week of his or her letter being received, page one of the complaint intake form is completed

and a letter to the complaint subcommittee members, together with the Registrar's recommendations regarding the file, if any, is prepared. Copies of all materials are placed in the office copy and each member's copy of the complaint file.

Status reports on all open complaint files – with identifying information removed – is provided to each member of the OJC at each of its regular meetings.

#### COMPLAINT SUBCOMMITTEES:

Complaint subcommittee members endeavour to review the status of all opened files assigned to them on receipt of their status report each month and take whatever steps are necessary to enable them to submit the file to the OJC for review at the earliest possible opportunity.

A letter advising the complaint subcommittee members that they have had a new case assigned to them is sent to the complaint subcommittee members, for their information, within a week of the file being opened and assigned. The complaint subcommittee members are contacted to determine if they want their copy of the file delivered to them or kept in their locked filing cabinet drawer in the OJC office. If files are delivered, receipt of the file by the member is confirmed. Complaint subcommittee members may attend at the OJC office to examine their files during regular office hours.

Complaint subcommittee members will endeavour to review and discuss their assigned files within a month of receipt of the file. All material (transcripts, audiotapes, court files, etc.) which a complaint subcommittee wishes to examine in relation to a complaint will be obtained on their behalf by the Registrar, and not by individual complaint subcommittee members.

Given the nature of the complaint, the complaint subcommittee may instruct the Registrar to order a transcript of evidence, or the tape recording of evidence, as part of their investigation. If necessary, the complainant is contacted to determine the stage the court proceeding is in before a transcript is ordered. The complaint subcommittee may instruct the Registrar to hold the file in abeyance until the matter before the courts is resolved.

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ADMINISTRATIVE MATTERS

APPENDIA

If a complaint subcommittee requires a response from the judge, the complaint subcommittee will direct the Registrar to ask the judge to respond to a specific issue or issues raised in the complaint. A copy of the complaint, the transcript (if any) and all of the relevant materials on file will be provided to the judge with the letter requesting the response. A judge is given thirty days from the date of the letter asking for a response, to respond to the complaint. If a response is not received within that time, the complaint subcommittee members are advised and a reminder letter is sent to the judge by registered mail. If no response is received within ten days from the date of the registered letter, and the complaint subcommittee is satisfied that the judge is aware of the complaint and has full particulars of the complaint, they will proceed in the absence of a response. Any response made to the complaint by the subject judge at this stage of the procedure is deemed to have been made without prejudice and may not be used at a hearing.

Transcripts and/or audiotapes of evidence and responses from judges to complaints are sent to complaint subcommittee members by courier, unless the members advise otherwise.

A complaint subcommittee may invite any party or witness to meet or communicate with it during its investigation.

The OJC secretary transcribes letters of complaint that are handwritten and provides secretarial assistance and support to members of the complaint subcommittee, as required.

A complaint subcommittee may direct the Registrar to retain or engage persons, including counsel, to assist it in its investigation of a complaint.

subs. 51.4(5)

One member of each complaint subcommittee will be responsible to contact the Assistant Registrar by a specified deadline prior to each scheduled OJC meeting to advise what files, if any, assigned to the complaint subcommittee are ready to be reported to a review panel. The complaint subcommittee will also provide a legible, fully completed copy of pages 2 and 3 of the complaint intake form for each file which is ready to be reported and will advise as to what other file material, besides the complaint, should be copied from the file and provided to the members of the review panel for their consideration. No information that could identify either the complainant or the judge who is the subject of the complaint will be included in the material provided to the review panel members.

At least one member of a complaint subcommittee shall be present when the subcommittee's report is made to a review panel. Complaint subcommittee members may also attend by teleconference when necessary.

#### **REVIEW PANELS:**

The chair of the review panel shall ensure that at least one copy of the relevant page of the complaint intake form is completed and provided to the Registrar at the conclusion of the review panel hearing.

#### **MEETING MATERIALS:**

All material prepared for meetings of the Ontario Judicial Council are confidential and shall not be disclosed or made public.

When a complaint subcommittee has indicated that it is ready to make a report to a review panel, the Registrar will prepare and circulate a draft case summary and a draft letter to the complainant to the members of the complaint subcommittee making the report and the members of the review panel assigned to hear the complaint subcommittee's report. The draft case summary and draft letter to the complainant will be circulated to the members for their review at least a week prior to the date of the scheduled Judicial Council meeting. Amendments to the draft case summary and the draft letter to the complainant may be made after discussion by the Judicial Council members at the meeting held to consider the complaint subcommittee's recommendation on individual complaint files.

# A P D D S D I X B

#### ONTARIO JUDICIAL COUNCIL - PROCEDURES DOCUMENT - ADMINISTRATIVE MATTERS

The draft and final case summary and the draft letter to the complainant which is submitted for approval will not contain any information which would identify either the complainant or the subject judge.

A copy of the final case summary is filed in every closed complaint file together with a copy of the final letter to the complainant advising of the disposition of the complaint.

# NOTICE OF DECISION – NOTIFICATION OF PARTIES:

After the draft letter to the complainant has been approved, by the investigating complaint subcommittee and the review panel, it is prepared in final form and sent to the complainant.

Complainants, in cases where their complaint is dismissed, are given notice of the decision of the OJC, with reasons, as required by subsection 51.4(2) of the *Courts of Justice Act*.

The OJC has distributed a waiver form for all judges to sign and complete, instructing the OJC of the circumstances in which an individual judge wishes to be advised of complaints made against them, which are dismissed. The OJC has also distributed an address form for all judges to sign and complete, instructing the OJC of the address to which correspondence about complaint matters should be sent.

Judges who had been asked for a response to the complaint, or who, to the knowledge of the OJC are otherwise aware of the complaint, will be contacted by telephone after the complaint has been dealt with and advised of the decision of the OJC. A letter confirming the disposition of the complaint will also be sent to the judge, in accordance with his/her instructions.

#### **CLOSING FILES:**

Once the parties have been notified of the OJC's decision, the original copy of the complaint file is marked "closed" and stored in a locked filing cabinet. Complaint subcommittee members return their copies of the file to the Registrar to be destroyed or advise, in writing, that they have destroyed their copy of the complaint file. If a member's copy of the complaint file, or written notice of the file's destruction, is not received within two weeks after the review panel meeting, OJC staff will contact the complaint subcommittee member, to remind him or her to destroy his or her copy of the complaint file, and provide written notice, or arrange to have the file returned to the OJC, by courier, for shredding.

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# APPENDIX-C

ONTARIO COURT OF JUSTICE
CONTINUING EDUCATION PLAN

# ONTARIO COURT OF JUSTICE CONTINUING EDUCATION PLAN

The Continuing Education Plan for the Ontario Court of Justice has the following goals:

- 1. Maintaining and developing professional competence.
- 2. Maintaining and developing social awareness.
- 3. Encouraging personal growth.

The Plan provides each judge with an opportunity of having approximately ten days of continuing education per calendar year dealing with a wide variety of topics, including substantive law, evidence, *Charter of Rights*, skills training and social context. While many of the programs attended by the judges of the Ontario Court of Justice are developed and presented by the judges of the Court themselves, frequent use is made of outside resources in the planning and presentation of programs. Lawyers, government and law enforcement officials, academics, and other professionals have been used extensively in most education programs. addition, judges are encouraged to identify and attend external programs of interest and benefit to themselves and the Court.

#### **EDUCATION SECRETARIAT**

The coordination of the planning and presentation of education programs is assured by the Education Secretariat. The composition of the Secretariat is as follows: the Chief Justice as Chair (ex officio), four judges nominated by the Chief Justice and four judges nominated by the Ontario Conference of Judges. The Ontario Court of Justice's research counsel serve as consultants. The Secretariat meets approximately four times per year to discuss matters pertaining to education and reports to the Chief Justice. The mandate and goals of the Education Secretariat are as follows:

The Education Secretariat is committed to the importance of education in enhancing professional excellence.

It is the mandate of the Education Secretariat to promote educational experiences that encourage judges to be reflective about their professional practices, to increase their substantive knowledge, and to engage in ongoing, lifelong and self-directed learning.

To meet the needs of an independent judiciary, the Education Secretariat will:

- Promote education as a way to encourage excellence; and
- Support and encourage programs which maintain and enhance social, ethical and cultural sensitivity.

The goals of the Education Secretariat are:

- 1. To stimulate continuing professional and personal development;
- 2. To ensure that education is relevant to the needs and interests of the provincial judiciary;
- 3. To support and encourage programs that maintain high levels of competence and knowledge in matters of evidence, procedure and substantive law;
- 4. To increase knowledge and awareness of community and social services structures and resources that may assist and complement educational programs and the work of the courts;
- 5. To foster the active recruitment and involvement of the judiciary at all stages of program conceptualization, development, planning, delivery and evaluation;
- 6. To promote an understanding of judicial development;
- 7. To facilitate the desire for life-long learning and reflective practices;

# ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) – CONTINUING EDUCATION PLAN

- 8. To establish and maintain structures and systems to implement the mandate and goals of the Secretariat; and
- 9. To evaluate the educational process and programs.

The Education Secretariat provides administrative and logistical support for the education programs presented within the Ontario Court of Justice. In addition, all education program plans are presented to and approved by the Education Secretariat as the Secretariat is responsible for the funding allocation for education programs.

The current education plan for judges of the Ontario Court of Justice is divided into two parts;

- 1. First Year Education,
- 2. Continuing Education.

#### I FIRST YEAR EDUCATION

Each judge of the Ontario Court of Justice is provided with certain texts and materials upon appointment including:

- Commentaries on Judicial Conduct (Canadian Judicial Council)
- Martin's Criminal Code
- Family Law Statutes of the Ontario Court of Justice
- The Conduct of a Trial
- Judge's Manual
- · Family Law Rules
- · Writing Reasons
- Ethical Principles for Judges (Canadian Judicial Council)

The Ontario Court of Justice organizes a one-day education program for newly appointed judges shortly after their appointment which deals with practical matters relating to the transition to the bench, including judicial conduct and judicial ethics, courtroom demeanour and behaviour, available resources, etc. This program is presented at the Office of the Chief Justice twice a year.

Upon appointment, each new judge is assigned by the Chief Justice to one of the seven regions of the Province. The Regional Senior Judge for that region is then responsible for assigning and scheduling the new judge within the region. Depending on the new judge's background and experience at the time of appointment, the Regional Senior Judge will assign the newly-appointed judge for a period of time (usually several weeks prior to swearing-in) to observe senior, more experienced judges and/or specific courtrooms. During this period, the new judge sits in the courtroom, attends in chambers with experienced judges and has an opportunity to become familiar with their new responsibilities.

During the first year following appointment, or so soon thereafter as is possible, new judges attend the New Judges' Training Program presented by the Canadian Association of Provincial Court judges (C.A.P.C.J.) at Carling Lake in the Province of Quebec. This intensive one-week program is practical in nature and is oriented principally to the area of criminal law, with some reference to areas of family law. Judges in the first year of appointment are also encouraged to attend all education programs relating to their field(s) of specialization presented by the Ontario Court of Justice (These programs are outlined under the heading "Continuing Education").

Each judge at the time of appointment is invited to participate in a mentoring program which has been developed within the Ontario Court of Justice by the Ontario Conference of Judges. New judges also have the opportunity (as do all judges) to discuss matters of concern or interest with their peers at any time.

All judges from the date of their appointment have equal access to a number of resources that impact directly or indirectly upon the work of the Ontario Court of Justice, including legal texts, case reporting services, the Ontario Court of Justice Research Centre (discussed below), computer courses and courses in *Quicklaw* (a computer law database and research facility).

#### 2. CONTINUING EDUCATION

Continuing education programs presented to judges of the Ontario Court of Justice are of two types;

- 1) Programs presented by the Ontario Conference of Judges usually of particular interest to judges in the fields of criminal or family law respectively;
- 2) Programs presented by the Education Secretariat.

# I. PROGRAMS PRESENTED BY THE ONTARIO CONFERENCE OF JUDGES

The programs presented by the Ontario Conference of Judges constitute the **Core Program** of the Ontario Court of Justice education programming. The Ontario Conference of Judges has two Education Committees (criminal and family) composed of a number of judges, one of whom is normally designated as the education chair. These committees meet as required and work throughout the year on the planning, development and presentation of the core education programs.

The Ontario Conference of Judges presents three education programs in the area of family law, one each in January (the Judicial Development Institute), May (in conjunction with the Annual meeting of the Court) and September. Generally speaking, the principal topics are a) Child Welfare, and b) Family Law (custody, access and support). Additional topics involving skills development, case management, legislative changes, social context and other areas are incorporated as the need arises. Each program is of two to three days duration and is open to any judge who spends a significant amount of his or her time presiding over family law matters.

There are also two major criminal law programs presented each year.

a) A three-day Regional Seminar is organized in October and November of each year at four regional locations. These seminars customarily focus on areas of sentencing and the law of evidence, although a variety of other topics may also be included. Similar programs are presented in each of the four regional locations.

b) A two and a half day education seminar is presented in the month of May in conjunction with the annual meeting of the Court. All judges presiding in criminal law courts are entitled and encouraged to attend these seminars.

#### II. SECRETARIAT PROGRAMS

The programs that are planned and presented by the Education Secretariat tend to deal with subject matter that is neither predominantly criminal nor family, or that can be presented on more than one occasion to different groups of judges.

- 1. JUDGMENT WRITING: This two-day seminar is presented to a group of approximately 10 judges at a time as funding permits. Lately two seminars have been presented in February of each year at the Office of the Chief Justice by Professor Edward Berry of the University of Victoria.
  - In the 1997/98 fiscal year the Education Secretariat contracted with Professor Berry to prepare a text in judgment writing for all judges of the Court. That text has now been prepared and distributed to all judges of the Court and is now in its second edition.
- 2. PRE-RETIREMENT SEMINARS: Intended to assist judges in their retirement planning (together with their spouses), this two and one-half day program deals with the transition from the bench to retirement and is presented in Toronto whenever numbers warrant.
- 3. JUDICIAL COMMUNICATION PROGRAM. In March, 1998, the Ontario Court of Justice retained the services of Professor Gordon Zimmerman together with Professor Alayne Casteel of the University of Nevada to present a training program on Judicial Communication. The program involved directed activities and discussion on verbal and non-verbal communications, listening and related problems. Individual judges were videotaped and their communication techniques were critiqued in the course of the program. The program, which was presented to 25 Ontario Court of Justice judges, was intended to serve as a pilot project for future seminars on judicial communication, which will

#### ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

APPENDING A

be presented as funding and scheduling permits. The Secretariat put on the first of these seminars in March, 2000. It was attended by 16 judges of the Ontario Court of Justice and 2 from the Canadian Association of Provincial Court Judges who were invited to observe and participate in order to assess the program for use in other provinces. This program was organized, developed and presented by Professor Neil Gold and his associate Frank Borowicz who adapted the pilot project to the specific role of a trial judge in a Canadian court. The program was presented again in March, 2002 to another 21 judges of the Ontario Court of Justice.

4. SOCIAL CONTEXT PROGRAMS: The Ontario Court of Justice has presented significant programs dealing with social context. The first such program, entitled *Gender Equity*, was presented in the fall of 1992. That program used professional and community resources in its planning and presentation phases. A number of Ontario Court of Justice judges were trained as facilitators for the purposes of the program during the planning process, which lasted over 12 months. Extensive use was made of videos and printed materials which form a permanent reference. The facilitator model has since been used in a number of Ontario Court of Justice Education Programs.

The Court undertook its second major social context program, presented to all of its judges, in May 1996. The program, entitled *The Court in an Inclusive Society*, was intended to provide information about the changing nature of our society, to determine the impact of the changes and to equip the Court to respond better to those changes. A variety of pedagogical techniques including large and small group sessions were used in the course of the program. A group of judge facilitators were specifically trained for this program which was presented following significant community consultation.

In September 2000 the Ontario Conference of Judges and the Canadian Association of Provincial Court Judges met in Ottawa for a combined conference which covered, *inter alia*, poverty issues and, in addition, issues related to aboriginal justice.

As part of the Court's commitment to social context education, the Ontario Conference of Judges has created an *ad hoc* equality committee to ensure that social context issues are included and addressed on an on-going basis in the education programs of the associations.

5. UNIVERSITY EDUCATION PROGRAM. This program takes place over a five-day period in the spring in a university or similar setting. It provides an opportunity for approximately 30 - 35 judges to deal in depth with criminal law education topics in a more academic context.

#### III EXTERNAL EDUCATION PROGRAMS

- 1. FRENCH-LANGUAGE COURSES: Judges of the Ontario Court of Justice who are proficient in French may attend courses presented by the Office of the Commissioner for Federal Judicial Affairs. The frequency and duration of the courses are determined by the judge's level of proficiency. The purpose of the courses is to assure and to maintain the French language proficiency of those judges who are called upon to preside over French language matters in the Ontario Court of Justice. There are two levels of courses: (a) Terminology courses for francophone judges; (b) Terminology courses for anglophone (bilingual) judges.
- 2. OTHER EDUCATIONAL PROGRAMS: Judges of the Ontario Court of Justice are encouraged to pursue educational interests by attending education programs presented by other organizations and associations including:
  - Canadian Association of Provincial Court Judges
  - National Judicial Institute
  - Federation of Law Societies: Criminal (Substantive Law/Procedure/Evidence)
     & Family Law
  - International Association of Juvenile and Family Court Magistrates
  - Canadian Bar Association
  - Criminal Lawyers' Association
  - Advocate's Society Conference

#### ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

- Ontario Association for Family Mediation/Mediation Canada
- Canadian Institute for the Administration of Justice
- International Association of Women Judges (Canadian Chapter)
- Ontario Family Court Clinic Conference
- Canadian Institute for Advanced Legal Studies

The process involves an application by a judge to attend such programs, a peer selection committee, and a program appraisal. This program depends upon available funding as determined by the Education Secretariat on an annual basis.

The Education Secretariat has however established a Conference Attendance Committee to consider applications by individual judges for funding to attend conferences/seminars/programs other than those presented by the Ontario Court of Justice. Funding, when provided, is usually less than 100% since it is designed to provide supplementary assistance to judges who are prepared to commit some of their own resources to attend.

3. COMPUTER COURSES: The Ontario Court of Justice, through a tendered contract with a training vendor previously organized a series of computer training courses for judges of the Ontario Court of Justice. These courses were organized according to skill level and geographic location and presented at different times throughout the Province. Judges typically attended at the offices of the training vendor for courses in computer operation, word-processing and data storage and retrieval. Other courses were and are presented in the use of *Quicklaw* (the computer law database and research facility).

As the Desktop Computer Implementation (D.C.I.) Project and the Integrated Justice Project were implemented across the justice system in Ontario, starting in the summer of 1998, computer training for judges was significantly increased by the Project in order to ensure appropriate levels of computer literacy for all members of the Court

4. NATIONAL JUDICIAL INSTITUTE (N.J.I.): The Ontario Court of Justice through its Education Secretariat makes a financial contribution to the operation of the National Judicial Institute. The N.J.I., based in Ottawa, sponsors a number of education programs across the country for federally and provincially appointed judges. Individual judges have attended and will continue to attend N.J.I. programs in the future, depending on location and subject matter. The Chief Justice is a member of the Board of the N.J.I.

The Ontario Court of Justice has entered into a joint venture with the N.J.I. which resulted in the hiring of an Education Director for the Ontario Court of Justice who is also responsible for the coordination and development of programs for Provincial judges in other provinces.

In September, 2002 the Ontario Court of Justice and the National Judicial Institute jointly presented a conference on Child Welfare Law which was attended by both federal and provincial judges from across the country.

#### IV. OTHER EDUCATIONAL RESOURCES

- 1. JUDICIAL RESEARCH CENTRE: Judges of the Ontario Court of Justice have access to the Ontario Court of Justice Research Centre located at Old City Hall in Toronto. The Research Centre, a law library and computer research facility, is staffed by three research counsel together with support staff and is accessible in person, by telephone, E-mail or fax. The Research Centre responds to specific requests from judges for research and, in addition, provides updates with respect to legislation and relevant case law through its regular publication 'Items of Interest'.
- 2. RECENT DEVELOPMENTS: The Honourable Mr. Justice Ian MacDonnell also provides to judges of the Ontario Court of Justice his summary and comments on current criminal law decisions of the Ontario Court of Appeal and of the Supreme Court of Canada in a publication entitled 'Recent Developments'.

#### ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION) - CONTINUING EDUCATION PLAN

- 3. SELF-FUNDED LEAVE: In order to provide access to educational opportunities that fall outside the parameters of regular judicial education programs, the Ontario Court of Justice has developed a self-funded leave policy that allows judges to defer income over a period of years in order to take a period of self-funded leave of up to twelve months. Prior approval is required for such leave and a peer review committee reviews the applications in selecting those judges who will be authorized to take such leave.
- 4. REGIONAL MEETINGS: The current seven regions of the Court have annual regional meetings. While these meetings principally provide an opportunity to deal with regional administrative/management issues, some also have an educational component. Such is the case, for example, with the northern regional meeting in which judges of the Northeast and Northwest Regions meet together and deal with educational issues of special interest to the north, such as judicial isolation, travel and aboriginal justice.
- 5. In addition to the educational programs outlined above, the fundamental education of judges continues to be self-directed and is effected *inter alia* through continuing peer discussions and individual reading and research.

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# APPENDIX-D

# COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

The following excerpt from the *Courts of Justice Act*, c.43 should not be relied on as the authoritative text. The authoritative text is set out in the official volumes and in office consolidations printed by Publications Ontario.

### COURTS OF JUSTICE ACT CHAPTER C.43 ONTARIO JUDICIAL COUNCIL

#### **SECTION 49**

#### JUDICIAL COUNCIL

49. (1) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French.

#### COMPOSITION

- (2) The Judicial Council is composed of,
- (a) the Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice;
- (b) the Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, and the Associate Chief Justice of the Ontario Court of Justice;
- (c) a regional senior judge of the Ontario Court of Justice, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation;
- (d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;
- (e) the Treasurer of The Law Society of Upper Canada, or another bencher of the Law Society who is a lawyer, designated by the Treasurer;
- (f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;
- (g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

#### TEMPORARY MEMBERS

(3) The Chief Justice of the Ontario Court of Justice may appoint a judge of that division to be a temporary member of the Judicial Council in the place of another provincial judge, for the purposes of dealing with a complaint, if the requirements of subsections (13), (15), (17), (19) and (20) cannot otherwise be met.

#### CRITERIA

P-P II be D-I N

(4) In the appointment of members under clauses (2) (d), (f) and (g), the importance of reflecting, in the composition of the Judicial Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

#### TERM OF OFFICE

(5) The regional senior judge who is appointed under clause (2) (c) remains a member of the Judicial Council until he or she ceases to hold office as a regional senior judge.

#### Same

(6) The members who are appointed under clauses (2) (d), (f) and (g) hold office for four-year terms and shall not be reappointed.

#### STAGGERED TERMS

(7) Despite subsection (6), one of the members first appointed under clause (2) (d) and two of the members first appointed under clause (2) (g) shall be appointed to hold office for six-year terms.

#### CHAIR

(8) The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the meetings and hearings of the Judicial Council that deal with complaints against particular judges and its meetings held for the purposes of section 45 and subsection 47 (5).

#### Same

(9) The Chief Justice of the Ontario Court of Justice, or another judge of that division designated by the Chief Justice, shall chair all other meetings and hearings of the Judicial Council.

#### Same

(10) The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

#### OPEN AND CLOSED HEARINGS AND MEETINGS

(11) The Judicial Council's hearings and meetings under sections 51.6 and 51.7 shall be open to the public, unless subsection 51.6 (7) applies; its other hearings and meetings may be conducted in private, unless this *Act* provides otherwise.

#### VACANCIES

(12) Where a vacancy occurs among the members appointed under clause (2) (d), (f) or (g), a new member similarly qualified may be appointed for the remainder of the term.

#### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### QUORUM

- (13) The following quorum rules apply, subject to subsections (15) and (17):
- 1. Eight members, including the chair, constitute a quorum.
- At least half the members present must be judges and at least four must be persons who are not judges.

#### REVIEW PANELS

(14) The Judicial Council may establish a panel for the purpose of dealing with a complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10) and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

#### Same

- (15) The following rules apply to a panel established under subsection (14):
- 1. The panel shall consist of two provincial judges other than the Chief Justice, a lawyer and a person who is neither a judge nor a lawyer.
- 2. One of the judges, as designated by the Judicial Council, shall chair the panel.
- 3. Four members constitute a quorum.

#### HEARING PANELS

(16) The Judicial Council may establish a panel for the purpose of holding a hearing under section 51.6 and considering the question of compensation under section 51.7, and the panel has all the powers of the Judicial Council for that purpose.

#### Same

- (17) The following rules apply to a panel established under subsection (16):
- 1. Half the members of the panel, including the chair, must be judges, and half must be persons who are not judges.
- 2. At least one member must be a person who is neither a judge nor a lawyer.
- 3. The Chief Justice of Ontario, or another judge of the Court of Appeal designated by the Chief Justice, shall chair the panel.
- 4. Subject to paragraphs 1, 2 and 3, the Judicial Council may determine the size and composition of the panel.

5. All the members of the panel constitute a quorum.

#### CHAIR

(18) The chair of a panel established under subsection (14) or (16) is entitled to vote, and may cast a second deciding vote if there is a tie.

#### PARTICIPATION IN STAGES OF PROCESS

- (19) The members of the subcommittee that investigated a complaint shall not,
- (a) deal with the complaint under subsection 51.4 (17) or (18) or subsection 51.5 (8) or (10); or
- (b) participate in a hearing of the complaint under section 51.6.

#### Same

(20) The members of the Judicial Council who dealt with a complaint under subsection 51.4~(17) or (18) or subsection 51.5~(8) or (10) shall not participate in a hearing of the complaint under section 51.6.

#### EXPERT ASSISTANCE

(21) The Judicial Council may engage persons, including counsel, to assist it.

#### SUPPORT SERVICES

(22) The Judicial Council shall provide support services, including initial orientation and continuing education, to enable its members to participate effectively, devoting particular attention to the needs of the members who are neither judges nor lawyers and administering a part of its budget for support services separately for that purpose.

#### Same

(23) The Judicial Council shall administer a part of its budget for support services separately for the purpose of accommodating the needs of any members who have disabilities.

#### CONFIDENTIAL RECORDS

(24) The Judicial Council or a subcommittee may order that any information or documents relating to a mediation or a Council meeting or hearing that was not held in public are confidential and shall not be disclosed or made public.

#### Same

(25) Subsection (24) applies whether the information or documents are in the possession of the Judicial Council, the Attorney General or any other person.

#### COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

PPRINDIX DIX

#### **EXCEPTIONS**

- (26) Subsection (24) does not apply to information and documents,
- (a) that this *Act* requires the Judicial Council to disclose; or
- (b) that have not been treated as confidential and were not prepared exclusively for the purposes of the mediation or Council meeting or hearing.

#### PERSONAL LIABILITY

(27) No action or other proceeding for damages shall be instituted against the Judicial Council, any of its members or employees or any person acting under its authority for any act done in good faith in the execution or intended execution of the Council's or person's duty.

#### REMUNERATION

(28) The members who are appointed under clause (2) (g) are entitled to receive the daily remuneration that is fixed by the Lieutenant Governor in Council.

#### **SECTION 50**

# COMPLAINT AGAINST CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

- 50. (1) If the Chief Justice of the Ontario Court of Justice is the subject of a complaint,
- (a) the Chief Justice of Ontario shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of;
- (b) the Associate Chief Justice of the Ontario Court of Justice shall chair meetings and hearings of the Council instead of the Chief Justice of the Ontario Court of Justice, and make appointments under subsection 49 (3) instead of the Chief Justice, until the complaint is finally disposed of; and
- (c) any reference of the complaint that would otherwise be made to the Chief Justice of the Ontario Court of Justice under clause 51.4 (13) (b) or 51.4 (18) (c), subclause 51.5 (8) (b) (ii) or clause 51.5 (10) (b) shall be made to the Chief Justice of the Superior Court of Justice instead of to the Chief Justice of the Ontario Court of Justice.

#### SUSPENSION OF CHIEF JUSTICE

(2) If the Chief Justice of the Ontario Court of Justice is suspended under subsection 51.4 (12),

- (a) complaints that would otherwise be referred to the Chief Justice of the Ontario Court of Justice under clauses 51.4 (13) (b) and 51.4 (18) (c), subclause 51.5 (8) (b) (ii) and clause 51.5 (10) (b) shall be referred to the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of; and
- (b) annual approvals that would otherwise be granted or refused by the Chief Justice of the Ontario Court of Justice shall be granted or refused by the Associate Chief Justice of the Ontario Court of Justice, until the complaint is finally disposed of.

# COMPLAINT AGAINST ASSOCIATE CHIEF JUSTICE OR REGIONAL SENIOR JUDGE

(3) If the Associate Chief Justice of the Ontario Court of Justice or the regional senior judge appointed under clause 49 (2) (c) is the subject of a complaint, the Chief Justice of the Ontario Court of Justice shall appoint another judge of the Ontario Court of Justice to be a member of the Judicial Council instead of the Associate Chief Justice or regional senior judge, as the case may be, until the complaint is finally disposed of.

#### **SECTION 51**

#### PROVISION OF INFORMATION TO PUBLIC

51. (1) The Judicial Council shall provide, in courthouses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

#### Same

(2) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities

#### ASSISTANCE TO PUBLIC

(3) Where necessary, the Judicial Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

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# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

### TELEPHONE ACCESS

(4) The Judicial Council shall provide province-wide free telephone access, including telephone access for the deaf, to information about itself and its role in the justice system.

#### PERSONS WITH DISABILITIES

(5) To enable persons with disabilities to participate effectively in the complaints process, the Judicial Council shall ensure that their needs are accommodated, at the Council's expense, unless it would impose undue hardship on the Council to do so, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

### ANNUAL REPORT

(6) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant.

### TABLING

(7) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly.

# **SECTION 51.1**

### RULES

51.1 (1) The Judicial Council shall establish and make public rules governing its own procedures, including the following:

- 1. Guidelines and rules of procedure for the purpose of section 45.
- 2. Guidelines and rules of procedure for the purpose of subsection 51.4 (21).
- 3. Guidelines and rules of procedure for the purpose of subsection 51.4 (22)
- 4. If applicable, criteria for the purpose of subsection 51.5 (2).
- 5. If applicable, guidelines and rules of procedure for the purpose of subsection 51.5 (13).

- 6. Rules of procedure for the purpose of subsection 51.6 (3).
- 7. Criteria for the purpose of subsection 51.6 (7).
- 8. Criteria for the purpose of subsection 51.6 (8).
- 9. Criteria for the purpose of subsection 51.6 (10).

### REGULATIONS ACT

(2) The *Regulations Act* does not apply to rules, guidelines or criteria established by the Judicial Council.

# SECTIONS 28, 29 AND 33 OF SPPA

(3) Sections 28, 29 and 33 of the *Statutory Powers Procedure Act* do not apply to the Judicial Council.

# **SECTION 51.2**

### USE OF OFFICIAL LANGUAGES OF COURTS

51.2 (1) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

#### Same

(2) Complaints against provincial judges may be made in English or French.

### Same

- (3) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,
  - (a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;
  - (b) to be provided with the assistance of an interpreter at the hearing; and
  - (c) to be provided with simultaneous interpretation into French of the English portions of the hearing.

### Same

(4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

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### BILINGUAL HEARING OR MEDIATION

(5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

### PART OF HEARING OR MEDIATION

(6) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

#### Same

- (7) In a bilingual hearing or mediation,
- (a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;
- (b) documents may be filed in either language;
- (c) in the case of a mediation, discussions may take place in either language;
- (d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

### Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

# **SECTION 51.3**

### COMPLAINTS

51.3 (1) Any person may make a complaint to the Judicial Council alleging misconduct by a provincial judge.

### Same

(2) If an allegation of misconduct against a provincial judge is made to a member of the Judicial Council, it shall be treated as a complaint made to the Judicial Council.

### Same

(3) If an allegation of misconduct against a provincial judge is made to any other judge or to the Attorney General, the other judge, or the Attorney General, as the case may be, shall provide the person making the allegation

with information about the Judicial Council's role in the justice system and about how a complaint may be made, and shall refer the person to the Judicial Council.

### CARRIAGE OF MATTER

(4) Once a complaint has been made to the Judicial Council, the Council has carriage of the matter.

### INFORMATION RE COMPLAINT

(5) At any person's request, the Judicial Council may confirm or deny that a particular complaint has been made to it.

# **SECTION 51.4**

### REVIEW BY SUBCOMMITTEE

51.4 (1) A complaint received by the Judicial Council shall be reviewed by a subcommittee of the Council consisting of a provincial judge other than the Chief Justice and a person who is neither a judge nor a lawyer.

### ROTATION OF MEMBERS

(2) The eligible members of the Judicial Council shall all serve on the subcommittee on a rotating basis.

### DISMISSAL

(3) The subcommittee shall dismiss the complaint without further investigation if, in the subcommittee's opinion, it falls outside the Judicial Council's jurisdiction or is frivolous or an abuse of process.

### INVESTIGATION

(4) If the complaint is not dismissed under subsection (3), the subcommittee shall conduct such investigation as it considers appropriate.

### EXPERT ASSISTANCE

(5) The subcommittee may engage persons, including counsel, to assist it in its investigation.

# INVESTIGATION PRIVATE

(6) The investigation shall be conducted in private.

# NON-APPLICATION OF SPPA

(7) The *Statutory Powers Procedure Act* does not apply to the subcommittee's activities.

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

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#### INTERIM RECOMMENDATIONS

(8) The subcommittee may recommend to a regional senior judge the suspension, with pay, of the judge who is the subject of the complaint, or the judge's reassignment to a different location, until the complaint is finally disposed of.

### Same

(9) The recommendation shall be made to the regional senior judge appointed for the region to which the judge is assigned, unless that regional senior judge is a member of the Judicial Council, in which case the recommendation shall be made to another regional senior judge.

# POWER OF REGIONAL SENIOR JUDGE

(10) The regional senior judge may suspend or reassign the judge as the subcommittee recommends.

#### DISCRETION

(11) The regional senior judge's discretion to accept or reject the subcommittee's recommendation is not subject to the direction and supervision of the Chief Justice.

# EXCEPTION: COMPLAINTS AGAINST CERTAIN JUDGES

(12) If the complaint is against the Chief Justice of the Ontario Court of Justice, an associate chief justice of the Ontario Court of Justice or the regional senior judge who is a member of the Judicial Council, any recommendation under subsection (8) in connection with the complaint shall be made to the Chief Justice of the Superior Court of Justice, who may suspend or reassign the judge as the subcommittee recommends.

### SUBCOMMITTEE'S DECISION

- (13) When its investigation is complete, the subcommittee shall,
- (a) dismiss the complaint;
- (b) refer the complaint to the Chief Justice;
- (c) refer the complaint to a mediator in accordance with section 51.5; or
- (d) refer the complaint to the Judicial Council, with or without recommending that it hold a hearing under section 51.6.

### Same

(14) The subcommittee may dismiss the complaint or refer it to the Chief Justice or to a mediator only if both members agree; otherwise, the complaint shall be referred to the Judicial Council.

## CONDITIONS, REFERENCE TO CHIEF JUSTICE

(15) The subcommittee may, if the judge who is the subject of the complaint agrees, impose conditions on a decision to refer the complaint to the Chief Justice.

### REPORT

(16) The subcommittee shall report to the Judicial Council, without identifying the complainant or the judge who is the subject of the complaint, its disposition of any complaint that is dismissed or referred to the Chief Justice or to a mediator.

# POWER OF JUDICIAL COUNCIL

(17) The Judicial Council shall consider the report, in private, and may approve the subcommittee's disposition or may require the subcommittee to refer the complaint to the Council.

### Same

- (18) The Judicial Council shall consider, in private, every complaint referred to it by the subcommittee, and may,
  - (a) hold a hearing under section 51.6;
  - (b) dismiss the complaint;
  - (c) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection (15); or
  - (d) refer the complaint to a mediator in accordance with section 51.5.

# NON-APPLICATION OF SPPA

(19) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (17) and (18).

### NOTICE TO JUDGE AND COMPLAINANT

(20) After making its decision under subsection (17) or (18), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

# GUIDELINES AND RULES OF PROCEDURE

(21) In conducting investigations, in making recommendations under subsection (8) and in making decisions under subsections (13) and (15), the subcommittee shall follow the Judicial Council's guidelines and rules of procedure established under subsection 51.1 (1).

# APPEVOIX-D

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

### Same

(22) In considering reports and complaints and making decisions under subsections (17) and (18), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

# SECTION 51.5

### **MEDIATION**

51.5 (1) The Judicial Council may establish a mediation process for complainants and for judges who are the subject of complaints.

### CRITERIA

(2) If the Judicial Council establishes a mediation process, it must also establish criteria to exclude from the process complaints that are inappropriate for mediation.

### Same

- (3) Without limiting the generality of subsection (2), the criteria must ensure that complaints are excluded from the mediation process in the following circumstances:
  - 1. There is a significant power imbalance between the complainant and the judge, or there is such a significant disparity between the complainant's and the judge's accounts of the event with which the complaint is concerned that mediation would be unworkable.
  - 2. The complaint involves an allegation of sexual misconduct or an allegation of discrimination or harassment because of a prohibited ground of discrimination or harassment referred to in any provision of the *Human Rights Code*.
  - 3. The public interest requires a hearing of the complaint.

### LEGAL ADVICE

(4) A complaint may be referred to a mediator only if the complainant and the judge consent to the referral, are able to obtain independent legal advice and have had an opportunity to do so.

### TRAINED MEDIATOR

(5) The mediator shall be a person who has been trained in mediation and who is not a judge, and if the mediation is conducted by two or more persons acting together, at least one of them must meet those requirements.

### IMPARTIALITY

(6) The mediator shall be impartial.

### EXCLUSION

(7) No member of the subcommittee that investigated the complaint and no member of the Judicial Council who dealt with the complaint under subsection 51.4 (17) or (18) shall participate in the mediation.

### REVIEW BY COUNCIL

- (8) The mediator shall report the results of the mediation, without identifying the complainant or the judge who is the subject of the complaint, to the Judicial Council, which shall review the report, in private, and may,
  - (a) approve the disposition of the complaint; or
  - (b) if the mediation does not result in a disposition or if the Council is of the opinion that the disposition is not in the public interest,
    - (i) dismiss the complaint,
    - (ii) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15), or
    - (iii) hold a hearing under section 51.6.

### REPORT

(9) If the Judicial Council approves the disposition of the complaint, it may make the results of the mediation public, providing a summary of the complaint but not identifying the complainant or the judge.

### REFERRAL TO COUNCIL

- (10) At any time during or after the mediation, the complainant or the judge may refer the complaint to the Judicial Council, which shall consider the matter, in private, and may,
  - (a) dismiss the complaint;
  - (b) refer the complaint to the Chief Justice, with or without imposing conditions as referred to in subsection 51.4 (15); or
  - (c) hold a hearing under section 51.6.

### NON-APPLICATION OF SPPA

(11) The *Statutory Powers Procedure Act* does not apply to the Judicial Council's activities under subsections (8) and (10).

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

# NOTICE TO JUDGE AND COMPLAINANT

(12) After making its decision under subsection (8) or (10), the Judicial Council shall communicate it to the judge and the complainant, giving brief reasons in the case of a dismissal.

### GUIDELINES AND RULES OF PROCEDURE

(13) In reviewing reports, considering matters and making decisions under subsections (8) and (10), the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

# **SECTION 51.6**

# ADJUDICATION BY COUNCIL

51.6 (1) When the Judicial Council decides to hold a hearing, it shall do so in accordance with this section.

# APPLICATION OF SPPA

(2) The *Statutory Powers Procedure Act*, except section 4 and subsection 9 (1), applies to the hearing.

### RULES OF PROCEDURE

(3) The Judicial Council's rules of procedure established under subsection 51.1 (1) apply to the hearing.

# COMMUNICATION RE SUBJECT-MATTER OF HEARING

(4) The members of the Judicial Council participating in the hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any party, counsel, agent or other person, unless all the parties and their counsel or agents receive notice and have an opportunity to participate.

### **EXCEPTION**

(5) Subsection (4) does not preclude the Judicial Council from engaging counsel to assist it in accordance with subsection 49 (21), and in that case the nature of the advice given by counsel shall be communicated to the parties so that they may make submissions as to the law.

### **PARTIES**

(6) The Judicial Council shall determine who are the parties to the hearing.

## EXCEPTION, CLOSED HEARING

(7) In exceptional circumstances, if the Judicial Council determines, in accordance with the criteria established under subsection 51.1 (1), that the desirability of holding open hearings is outweighed by the desirability of maintaining confidentiality, it may hold all or part of the hearing in private.

# DISCLOSURE IN EXCEPTIONAL CIRCUMSTANCES

(8) If the hearing was held in private, the Judicial Council shall, unless it determines in accordance with the criteria established under subsection 51.1 (1) that there are exceptional circumstances, order that the judge's name not be disclosed or made public.

# ORDERS PROHIBITING PUBLICATION

(9) If the complaint involves allegations of sexual misconduct or sexual harassment, the Judicial Council shall, at the request of a complainant or of another witness who testifies to having been the victim of similar conduct by the judge, prohibit the publication of information that might identify the complainant or witness, as the case may be.

### PUBLICATION BAN

(10) In exceptional circumstances and in accordance with the criteria established under subsection 51.1 (1), the Judicial Council may make an order prohibiting, pending the disposition of a complaint, the publication of information that might identify the judge who is the subject of the complaint.

# DISPOSITIONS

- (11) After completing the hearing, the Judicial Council may dismiss the complaint, with or without a finding that it is unfounded or, if it finds that there has been misconduct by the judge, may,
  - (a) warn the judge;
  - (b) reprimand the judge;
  - (c) order the judge to apologize to the complainant or to any other person;
  - (d) order that the judge take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a judge;
  - (e) suspend the judge with pay, for any period;
  - (f) suspend the judge without pay, but with benefits, for a period up to thirty days; or

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

A P D II N D I N D

(g) recommend to the Attorney General that the judge be removed from office in accordance with section 51.8.

#### Same

(12) The Judicial Council may adopt any combination of the dispositions set out in clauses (11) (a) to (f).

### DISABILITY

(13) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office, but would be able to perform them if his or her needs were accommodated, the Council shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

### APPLICATION OF SUBS. (13)

- (14) Subsection (13) applies if,
- (a) the effect of the disability on the judge's performance of the essential duties of the office was a factor in the complaint; and
- (b) the Judicial Council dismisses the complaint or makes a disposition under clauses (11) (a) to (f).

### UNDUE HARDSHIP

(15) Subsection (13) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

# OPPORTUNITY TO PARTICIPATE

(16) The Judicial Council shall not make an order under subsection (13) against a person without ensuring that the person has had an opportunity to participate and make submissions.

### CROWN BOUND

(17) An order made under subsection (13) binds the Crown.

### REPORT TO ATTORNEY GENERAL

(18) The Judicial Council may make a report to the Attorney General about the complaint, investigation, hearing and disposition, subject to any order made under subsection 49 (24), and the Attorney General may make the report public if of the opinion that this would be in the public interest.

### NON-IDENTIFICATION OF PERSONS

- (19) The following persons shall not be identified in the report:
  - 1. A complainant or witness at whose request an order was made under subsection (9).
  - 2. The judge, if the hearing was conducted in private, unless the Judicial Council orders that the judge's name be disclosed.

### CONTINUING PUBLICATION BAN

(20) If an order was made under subsection (10) and the Judicial Council dismisses the complaint with a finding that it was unfounded, the judge shall not be identified in the report without his or her consent and the Council shall order that information that relates to the complaint and might identify the judge shall never be made public without his or her consent.

# SECTION 51.7

### COMPENSATION

51.7 (1) When the Judicial Council has dealt with a complaint against a provincial judge, it shall consider whether the judge should be compensated for his or her costs for legal services incurred in connection with all the steps taken under sections 51.4, 51.5 and 51.6 and this section in relation to the complaint.

# CONSIDERATION OF QUESTION COMBINED WITH HEARING

(2) If the Judicial Council holds a hearing into the complaint, its consideration of the question of compensation shall be combined with the hearing.

# PUBLIC OR PRIVATE CONSIDERATION OF OUESTION

(3) The Judicial Council's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

## RECOMMENDATION

(4) If the Judicial Council is of the opinion that the judge should be compensated, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation.

# COURTS OF JUSTICE ACT – CHAPTER C.43 – ONTARIO JUDICIAL COUNCIL

### Same

(5) If the complaint is dismissed after a hearing, the Judicial Council shall recommend to the Attorney General that the judge be compensated for his or her costs for legal services and shall indicate the amount.

### DISCLOSURE OF NAME

(6) The Judicial Council's recommendation to the Attorney General shall name the judge, but the Attorney General shall not disclose the name unless there was a public hearing into the complaint or the Council has otherwise made the judge's name public.

### AMOUNT OF COMPENSATION

(7) The amount of compensation recommended under subsection (4) or (5) may relate to all or part of the judge's costs for legal services, and shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

### PAYMENT

(8) The Attorney General shall pay compensation to the judge in accordance with the recommendation.

# **SECTION 51.8**

### REMOVAL FOR CAUSE

- 51.8 (1) A provincial judge may be removed from office only if,
- (a) a complaint about the judge has been made to the Judicial Council; and
- (b) the Judicial Council, after a hearing under section 51.6, recommends to the Attorney General that the judge be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of,
  - (i) inability, because of a disability, to perform the essential duties of his or her office (if an order to accommodate the judge's needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability),
  - (ii) conduct that is incompatible with the due execution of his or her office, or

(iii) failure to perform the duties of his or her office.

### TABLING OF RECOMMENDATION

(2) The Attorney General shall table the recommendation in the Assembly if it is in session or, if not, within fifteen days after the commencement of the next session.

### ORDER FOR REMOVAL

(3) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Assembly.

### APPLICATION

(4) This section applies to provincial judges who have not yet attained retirement age and to provincial judges whose continuation in office after attaining retirement age has been approved under subsection 47 (3), (4) or (5).

### TRANSITION

(5) A complaint against a provincial judge that is made to the Judicial Council before the day section 16 of the Courts of Justice Statute Law Amendment Act, 1994 comes into force, and considered at a meeting of the Judicial Council before that day, shall be dealt with by the Judicial Council as it was constituted immediately before that day and in accordance with section 49 of this Act as it read immediately before that day.

# SECTION 51.9

### STANDARDS OF CONDUCT

51.9 (1) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council.

# DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council.

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COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

### GOALS

- (3) The following are among the goals that the Chief Justice may seek to achieve by implementing standards of conduct for judges:
  - 1. Recognizing the independence of the judiciary.
  - 2. Maintaining the high quality of the justice system and ensuring the efficient administration of justice.
  - 3. Enhancing equality and a sense of inclusiveness in the justice system.
  - 4. Ensuring that judges' conduct is consistent with the respect accorded to them.
  - 5. Emphasizing the need to ensure the professional and personal development of judges and the growth of their social awareness through continuing education.

# **SECTION 51.10**

### CONTINUING EDUCATION

51.10 (1) The Chief Justice of the Ontario Court of Justice shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council.

### DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council.

# GOALS

- (3) Continuing education of judges has the following goals:
- 1. Maintaining and developing professional competence.
- 2. Maintaining and developing social awareness.
- 3. Encouraging personal growth.

# **SECTION 51.11**

### PERFORMANCE EVALUATION

51.11 (1) The Chief Justice of the Ontario Court of Justice may establish a program of performance evaluation for provincial judges, and may implement the program when it has been reviewed and approved by the Judicial Council.

### DUTY OF CHIEF JUSTICE

(2) The Chief Justice shall make the existence of the program of performance evaluation public when it has been approved by the Judicial Council.

### GOALS

- (3) The following are among the goals that the Chief Justice may seek to achieve by establishing a program of performance evaluation for judges:
  - 1. Enhancing the performance of individual judges and of judges in general.
  - 2. Identifying continuing education needs.
  - 3. Assisting in the assignment of judges.
  - 4. Identifying potential for professional development.

### SCOPE OF EVALUATION

(4) In a judge's performance evaluation, a decision made in a particular case shall not be considered.

### CONFIDENTIALITY

(5) A judge's performance evaluation is confidential and shall be disclosed only to the judge, his or her regional senior judge, and the person or persons conducting the evaluation.

### INADMISSIBILITY, EXCEPTION

(6) A judge's performance evaluation shall not be admitted in evidence before the Judicial Council or any court or other tribunal unless the judge consents.

### APPLICATION OF SUBSS. (5), (6)

(7) Subsections (5) and (6) apply to everything contained in a judge's performance evaluation and to all information collected in connection with the evaluation

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

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# **SECTION 51.12**

#### CONSULTATION

51.12 In establishing standards of conduct under section 51.9, a plan for continuing education under section 51.10 and a program of performance evaluation under section 51.11, the Chief Justice of the Ontario Court of Justice shall consult with judges of that court and with such other persons as he or she considers appropriate.

# **SECTION 87**

#### **MASTERS**

87.—(1) Every person who was a master of the Supreme Court before the 1st day of September, 1990 is a master of the Superior Court of Justice.

# JURISDICTION

(2) Every master has the jurisdiction conferred by the rules of court in proceedings in the Superior Court of Justice.

### APPLICATION OF SS. 44 TO 51.12

(3) Sections 44 to 51.12 apply to masters, with necessary modifications, in the same manner as to provincial judges.

### **EXCEPTION**

(4) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to masters.

#### Same

(5) The right of a master to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

### Same

- (6) When the Judicial Council deals with a complaint against a master, the following special provisions apply:
  - 1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a master. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of

- Justice shall designate the master who is to replace the judge.
- 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
- 3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

#### Same

(7) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to masters only if the Chief Justice of the Superior Court of Justice consents.

### COMPENSATION

(8) Masters shall receive the same salaries, pension benefits, other benefits and allowances as provincial judges receive under the framework agreement set out in the Schedule to this *Act*.

# **SECTION 87.1**

### SMALL CLAIMS COURT JUDGES

87.1 (1) This section applies to provincial judges who were assigned to the Provincial Court (Civil Division) immediately before September 1, 1990.

# FULL AND PART-TIME SERVICE

(2) The power of the Chief Justice of the Ontario Court of Justice referred to in subsections 44(1) and (2) shall be exercised by the Chief Justice of the Superior Court of Justice with respect to provincial judges to whom this section applies.

### CONTINUATION IN OFFICE

(3) The right of a provincial judge to whom this section applies to continue in office under subsection 47 (3) is subject to the approval of the Chief Justice of the Superior Court of Justice, who shall make the decision according to criteria developed by himself or herself and approved by the Judicial Council.

# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

#### COMPLAINTS

- (4) When the Judicial Council deals with a complaint against a provincial judge to whom this section applies, the following special provisions apply:
  - 1. One of the members of the Judicial Council who is a provincial judge shall be replaced by a provincial judge who was assigned to the Provincial Court (Civil Division) immediately before September 1, 1990. The Chief Justice of the Ontario Court of Justice shall determine which judge is to be replaced and the Chief Justice of the Superior Court of Justice shall designate the judge who is to replace that judge.
  - 2. Complaints shall be referred to the Chief Justice of the Superior Court of Justice rather than to the Chief Justice of the Ontario Court of Justice.
    - 3. Subcommittee recommendations with respect to interim suspension shall be made to the appropriate regional senior judge of the Superior Court of Justice, to whom subsections 51.4 (10) and (11) apply with necessary modifications.

# APPLICATION OF SS. 51.9, 51.10, 51.11

(5) Section 51.9, which deals with standards of conduct for provincial judges, section 51.10, which deals with their continuing education, and section 51.11, which deals with evaluation of their performance, apply to provincial judges to whom this section applies only if the Chief Justice of the Superior Court of Justice consents.

# **SECTION 45**

# APPLICATION FOR ORDER THAT NEEDS BE ACCOMMODATED

45. (1) A provincial judge who believes that he or she is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated may apply to the Judicial Council for an order under subsection (2).

# DUTY OF JUDICIAL COUNCIL

(2) If the Judicial Council finds that the judge is unable, because of a disability, to perform the essential duties of the office unless his or her needs are accommodated, it shall order that the judge's needs be accommodated to the extent necessary to enable him or her to perform those duties.

### UNDUE HARDSHIP

(3) Subsection (2) does not apply if the Judicial Council is satisfied that making an order would impose undue hardship on the person responsible for accommodating the judge's needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

### GUIDELINES AND RULES OF PROCEDURE

(4) In dealing with applications under this section, the Judicial Council shall follow its guidelines and rules of procedure established under subsection 51.1 (1).

### OPPORTUNITY TO PARTICIPATE

(5) The Judicial Council shall not make an order under subsection (2) against a person without ensuring that the person has had an opportunity to participate and make submissions.

### CROWN BOUND

(6) The order binds the Crown.

# **SECTION 47**

### RETIREMENT

(1) Every provincial judge shall retire upon attaining the age of sixty-five years.

Same

(2) Despite subsection (1), a judge appointed as a full-time magistrate, judge of a juvenile and family court or master before December 2, 1968 shall retire upon attaining the age of seventy years.

# CONTINUATION OF JUDGES IN OFFICE

(3) A judge who has attained retirement age may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office as a full-time or part-time judge until he or she attains the age of seventy-five years.

# SAME, REGIONAL SENIOR JUDGES

(4) A regional senior judge of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Chief Justice, continue in that office until his or her term (including any renewal under subsection 42 (9)) expires, or until he or she attains the age of seventy-five years, whichever comes first.

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# COURTS OF JUSTICE ACT - CHAPTER C.43 - ONTARIO JUDICIAL COUNCIL

# SAME, CHIEF JUSTICE AND ASSOCIATE CHIEF JUSTICES

(5) A Chief Justice or associate chief justice of the Ontario Court of Justice who is in office at the time of attaining retirement age may, subject to the annual approval of the Judicial Council, continue in that office until his or her term expires, or until he or she attains the age of seventy-five years, whichever comes first.

### Same

(6) If the Judicial Council does not approve a Chief Justice or associate chief justice continuation in that office under subsection (5), his or her continuation in the office of provincial judge is subject to the approval of the Judicial Council and not as set out in subsection (3).

### CRITERIA

(7) Decisions under subsections (3), (4), (5) and (6) shall be made in accordance with criteria developed by the Chief Justice and approved by the Judicial Council.

## TRANSITION

(8) If the date of retirement under subsections (1) to (5) falls earlier in the calendar year than the day section 16 of the *Courts of Justice Statute Law Amendment Act*, 1994 comes into force and the annual approval is outstanding on that day, the judge's continuation in office shall be dealt with in accordance with section 44 of this *Act* as it read immediately before that day.

**\* \* \*** 



# APPENDIX-E

IN THE MATTER OF
A COMPLAINT RESPECTING
THE HONOURABLE MADAM JUSTICE
LESLEY M. BALDWIN

# 

# IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE MADAM JUSTICE LESLEY M. BALDWIN

The Ontario Judicial Council (the "Council"), pursuant to sections 51.4(18) and 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended, conducted a hearing in relation to The Honourable Madam Justice Lesley M. Baldwin on April 3, 2002.

In addition to the evidence and the oral submissions of counsel on that date, written submissions were filed by Presenting Counsel, Mr. Douglas Hunt, Q.C., and Counsel for Madam Justice Baldwin, Mr. Earl Levy, Q.C.

### THE FACTS

An agreed statement of facts was filed at the hearing. Those facts are summarized as follows:

In November of 1998, the Attorney General, on behalf of the Government of Ontario, announced the establishment of a Joint Committee on Domestic Violence ("the Committee"). The Committee was struck in response to the recommendations arising from the Coroner's Inquest into the murder of Arlene May, a victim of domestic violence, and the suicide of Randy Iles, the perpetrator of that violence.

The Attorney-General Charles Harnick established the following terms of reference for the Committee:

The Joint Committee on the Inquest touching the deaths of Arlene May and Randy Iles is established in accordance with the following terms of reference:

- 1) To review the jury recommendations and advise the Attorney General on their implementation which will include:
  - a) providing advice to the Attorney General on setting priorities relating to the creation of domestic violence services and programs;
  - b) providing advice to the Attorney General on the extent to which existing and planned programs are in keeping with the jury's recommendations;
  - c) providing advice to the Attorney General on the extent to which existing and planned programs serve to provide a seamless domestic violence program across Ontario;
  - d) providing advice to the Attorney General on mechanisms required to provide ongoing monitoring of the programs and services developed in response to the jury's recommendations.
- 2) To consult with experts, victims, members of culturally and regionally diverse groups and other stake holders and service providers as required to fulfill these terms of reference.

In the fall of 1998, Attorney General Harnick contacted then Chief Judge Sidney Linden and specifically requested that Chief Judge Linden permit Justice Baldwin to serve as Chair of the Committee. After speaking with Justice Baldwin, Chief Judge Linden gave his permission for Justice Baldwin to take a temporary leave of absence as a sitting Judge to Chair the Committee. Justice Baldwin accepted the position.

Former Chief Judge Sidney Linden, former Associate Chief Judge – Coordinator of Justices of the Peace Marietta Roberts and former Regional Senior Judge Anton Zuraw met with Justice Baldwin to discuss the request that she serve as Chair of the Committee. They cautioned her as they would caution any judge in her position that she would have to be careful with respect to what she said as a member and as Chair of the Committee because of her role as a judge.

Justice Baldwin was granted a temporary leave of absence as a sitting judge of the Ontario Court of Justice from January 1999, for a period of approximately six months, and then extended to nine months, in order to serve as Chair of the Committee. Justice Baldwin's leave of absence commenced on January 8, 1999 and ended in mid-August 1999. During this period the Ministry of the Attorney General provided special funding to the Ontario Court of Justice to support a per diem sitting judge to replace Justice Baldwin.

In addition to Justice Baldwin, the Committee was composed of community experts in the field of domestic violence prevention and senior government officials. The community experts on the Committee were Marilyn Struthers, Vivien Green, Dr. Peter Jaffe, and Roz Roach. The Government members of the Joint Committee were Assistant Deputy Ministers from the Ministry of the Attorney General, the Ministry of the Solicitor General, the Ministry of Correctional Services, the Ministry of Community and Social Services, and the Ontario Women's Directorate.

In fulfilling its terms of reference, the Committee worked with staff of various government ministries, heard about a wide range of domestic violence initiatives that are currently in place, and provided advice on initiatives that were in the process of development or implementation. The Committee consulted with a number of stakeholders and invited various community experts to meetings to share their knowledge and insights regarding specific jury recommendations.

# IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE MADAM JUSTICE LESLEY M. BALDWIN

The Committee's final report (the "Report") was signed and was formally submitted to Attorney General James Flaherty on behalf of the Government of Ontario, on August 12, 1999.

The Report was signed by the members of the Committee including Justice Baldwin. Justice Baldwin signed the report personally above the following "Judge Lesley Baldwin (Chair)".

The Report identified strategies for implementing the 213 recommendations of the jury in the May/Iles inquest, organized under four categories: 1) Essential Common Services; 2) Effective Justice System Response; 3) Achieving Seamlessness; 4) Funding and Planning Priorities.

Subsequent to the submission of the Report, Justice Baldwin returned to her duties as a sitting judge and the Ministry of the Attorney General ceased providing special funding to the Ontario Court of Justice to support Justice Baldwin's replacement.

In or about September 1999, Justice Baldwin sought permission from the Attorney General to refer to the Report at an international conference on domestic violence. The Assistant Deputy Minister of Family Justice Services, Angela Longo, granted permission to Justice Baldwin, on behalf of the Attorney General.

In or about May 2000, Justice Baldwin contacted the Acting Director of the Domestic Violence Work Team at the Ministry of the Attorney General, Linda Spears, seeking an electronic copy of the Report. Justice Baldwin indicated that she understood that funding was going to be sought from the Trillium Foundation for the printing of the Report in an easy to read format.

By letter dated July 5, 2000, four former members of the Committee, Roz Roach, Marilyn Struthers, Vivien Green and Dr. Peter Jaffe, wrote to Justice Baldwin as "... community members of the Joint Committee on Domestic Violence to request immediate action." (the "July 5th Letter").

In the July 5th Letter the former members made the following request:

"We respectfully request that you approach the Minister of the Attorney General as our Chair, in order to ask for two immediate actions:

- The first initiative relates to a reprinting and re-release of 2,000 copies of the Joint Committee Report. (We would be prepared to undertake this reprinting with a printer in London, who has costed this work.) This action would include:
  - reformatting the report to make it easier to read, more user-friendly, with a new cover

- reprinting 2,000 copies of the report in the new format
- distributing the report to all organizations throughout the province affected by the implementation plan.
- Secondly, we would like to explore the possibility of the Attorney General joining as a partner with a number of other charitable foundations and private sector companies to host a Summit on Woman Abuse in October/November 2000. Given the extensive research and documentation that has been contemplated in the last few years, yet the ongoing risk/abuse and murder that woman victims and their children continue to experience, the purpose of the Summit is to continue to highlight the issue of abuse and to promote actions and implementation of necessary changes. At this point we are looking at pulling together two representatives (one from the criminal justice system and one from a community service) from each of the 54 court catchments areas. The agenda for this Summit would be to discuss progress and issues related to woman abuse in each community in order to maintain a public focus on the critically important issue.

We are very interested in creating an opportunity for collaborative analysis and planning to take place through a provincial gathering such as the summit and already know of a least one foundation that is very interested in participating.

By letter dated July 7, 2000, on judicial letterhead, Justice Baldwin forwarded the July 5th Letter to the Attorney General for Ontario, The Honourable James M. Flaherty. Justice Baldwin copied the letter to Trinela Cane, Murray Segal, Dr. Peter G. Jaffe, Vivien Green, Marilyn Struthers and Roz Roach. The letter states as follows:

# RE: WORK OF THE JOINT COMMITTEE ON DOMESTIC VIOLENCE

Please find attached a letter I received from the community members of the Joint Committee on Domestic Violence.

I endorse their requests and can add parenthetically, that I have observed no noticeable change in the manner in which counsel are approaching these difficult cases in the criminal courts in which I preside.

I am willing to meet with you again to discuss the 5 year plan our committee prepared if this would be of assistance.

By letter stamped July 24, 2002, The Honourable James Flaherty responded to the July 7th Letter of Justice Baldwin.

# IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE MADAM JUSTICE LESLEY M. BALDWIN

A PERSONAL SET

His letter states, in part:

"... Thank you again for raising these issues with me. My scheduler, Agnes Vanya, will contact your office directly to arrange a meeting for us. I look forward to discussing the proposals put forward on behalf of the community members of the Joint Committee."

On or about July 31, 2000, Justice Baldwin and three members of the former Committee, Trinela Cane (ADM Planning and Policy, Solicitor General and Correctional Services and Executive Lead, Victim Strategy), Dr. Peter Jaffe and Vivien Green, met with Attorney General Flaherty and Joanna Kuras, the Executive Lead, Victim Services Division, Ministry of the Attorney General. The purpose of the meeting was to re-brief the Attorney General on the work of the Committee.

### THE COMPLAINT

The complaint is that Madam Justice Baldwin acted in a manner which was incompatible with the due execution of the duties of her office, and by such misconduct brought the administration of justice into disrepute.

Specifically, the misconduct is described by Presenting Counsel Mr. Hunt to be the continuing contact with Executive Branch over matters of government policy affecting the area of criminal justice administration beyond the time frame during which permission had been granted for Justice Baldwin to assist the Executive Branch – thereby aligning herself with initiatives or strategies that were being presented by a particular group. Such conduct raised questions with respect to her ability to remain impartial and independent on issues that might come before her.

### MISCONDUCT

"Judicial Misconduct" is not defined in the Courts of Justice Act.

Presenting Counsel, Mr. Hunt, has submitted, in our view correctly, that a determination of judicial misconduct must be made by way of a legal analysis.

One source for such an analysis would be the *Principles of Judicial Office* – a document prepared under the auspices of the Chief Justice of the Ontario Court of Justice.

This document is not a set of rules. Rather it is a guide to assist judges in addressing ethical and professional dilemmas – as well as in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of their professional lives.

At page 4, under the heading The Judge in the Community, it notes, under 3.2:

Judges must avoid any conflicts of interest or the appearance of any conflict of interest in the performance of their judicial duties.

And the commentary states:

Judges must not participate in any partisan political activity.

Both counsel also referred to Ethical Principles for Judges published by the Canadian Judicial Council.

It, too, is a set of "principles" which addresses ethical issues for judges as they live and work in their communities.

Under the heading Impartiality the "Statement" reads:

Judges must be and should appear to be impartial with respect to their decisions and decision-making.

The third "General Principle" under that heading states:

The appearance of impartiality is to be assessed from the perspective of a reasonable, fair-minded and informed person.

Under the heading Judicial Independence the "Statement" is:

An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and procedural aspects.

Commentary number five under that heading states as follows:

Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence . . . Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.

# Commentary number eight reads:

Judges are asked frequently to serve as inquiry commissioners. In considering such a request, a judge should think carefully about the implications for judicial independence of accepting the appointment. There are examples of Judicial

# APPENDIX

# IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE MADAM JUSTICE LESLEY M. BALDWIN

Commissioners becoming embroiled in public controversy and being criticized and embarrassed by the very governments which appointed them. The terms of reference and other conditions such as time and resources should be examined carefully so as to assess their compatibility with the judicial function.

In keeping with these principles, and the commentaries, Mr. Hunt submits that the test for misconduct must be a broadly similar test to that which the courts have developed to protect judicial independence – because judicial independence and impartiality are the two cornerstones which underlie statements made by courts, and by judicial regulatory bodies in which the issue of conduct, or misconduct, is discussed.

Section 51.6(11) of the *Courts of Justice Act* authorizes the Council to make a broad range of dispositions if it finds that a judge has been guilty of misconduct.

The Council may:

- a) warn the judge;
- b) reprimand the judge;
- c) order the judge to apologize to the complainant or to any other person;
- d) order the judge to take specified measures such areceiving education or treatment, as a condition of contiuing to sit as a judge;
- e) suspend the judge with pay, for any period;
- f) suspend the judge without pay, but with benefits, for a period up to thirty days; or
- g) recommend to the Attorney General that the judge be removed from office (in accordance with section 51.8).

The issue is – what is necessary to constitute misconduct within the meaning of that section.

In two recent cases, *Therrien v. Minister of Justice et al.* (2001), 155 C.C.C. (3d) 1, and *Moreau – Berube v. New Brunswick (Judicial Council*), 2002 S.C.C. 11, the Supreme Court of Canada considered the requirements for judicial misconduct albeit in the context of statutes in other provinces that did not have the full range of alternative dispositions found in s. 51.6(11). Nonetheless, in our view the test set out by the Supreme Court is applicable to findings of misconduct under the Ontario Statute.

In Moreau – Berube v. New Brunswick (Judicial Council), the Supreme Court discussed the tension between judicial accountability and judicial independence. Judges must be accountable for their judicial and extra-judicial conduct so

that the public have confidence in their capacity to perform the duties of office impartially, independently and with integrity. When public confidence is undermined by a judge's conduct there must be a process for remedying the harm that has been occasioned by that conduct. It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision-making.

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

Paraphrasing the test set out by the Supreme Court in *Therrien and Moreau-Berube*, the question under s. 51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.

It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

### HAS THERE BEEN MISCONDUCT HERE?

The complaint relates specifically to the July 7th Letter from Madam Justice Baldwin, on judicial letterhead, to the Attorney-General.

The issue is therefore whether the "sending" of the letter and its contents are so seriously contrary to the impartiality, integrity and independence of the judiciary that they would undermine the public's confidence in the ability of the judge to perform the duties of her office, or the public's confidence, generally, in the administration of justice, and necessitate a disposition under s. 51.6(11) of the *Act*.

# IN THE MATTER OF A COMPLAINT RESPECTING THE HONOURABLE MADAM JUSTICE LESLEY M. BALDWIN

From the perspective of public confidence – these facts are relevant:

- Madam Justice Baldwin was given permission by her Chief Justice to serve as Chair of the Committee.
- Nothing in the Report submitted by the Committee indicates that specific sentences should be imposed in domestic violence cases.
- Nothing in the Report says that the presumption of innocence or the doctrine of reasonable doubt should be any different with respect to cases alleging domestic abuse.
- Nothing in the Report suggests changes to the rules of evidence to make it easier for the Crown to obtain a conviction.
- The July 7th Letter does not add anything to, or advocate anything different from the contents of the Report in relation to the administration of justice. The comment by Justice Baldwin that "...she has observed no noticeable change in the manner in which counsel are approaching these difficult cases in the criminal courts in which I preside" does not make reference to anything specific either in relation to the contents of the Report, or to the administration of justice generally.
- Madam Justice Baldwin, through her counsel, has expressed her regret that the July 7th Letter has been interpreted by anyone as an indication that there would be partiality on her part in domestic abuse cases. She has stated to the Council that this was not her intention.

We note as well that Justice Baldwin did not intend that the letter receive public notice. It was not written with a view to bringing public pressure on the government. There is no effort by Justice Baldwin to politically embarrass the government for not acting on the Committee's report. The fact that the letter did reach the public domain was not the result of Justice Baldwin's actions. In our view, the writing of the letter was more in the nature of a reaffirmation by Justice Baldwin of the views earlier expressed in the Committee's report.

Having reviewed the specific details of the complaint from the perspective of the "reasonable, fair-minded, informed member of the public", in the context of the *Principles of Judicial Office*, and the test set out above, the Council concludes there has been no misconduct. We note that forwarding the letter from her Committee members on her judicial stationery may not have been the most appropriate way for the Committee to follow-up with the Attorney-General. The Council determines therefore that the complaint was not altogether unfounded, but in our view, neither the use of judicial stationery to attach the Committee members' requests nor the parenthetical comment by Madam Justice Baldwin is so seriously contrary to the impartiality, integrity and independence of the judiciary that a finding of misconduct is warranted.

The complaint is, therefore, dismissed.

Having regard to section 51.7(5) of the *Courts of Justice Act*, we shall recommend to the Attorney General that Madam Justice Baldwin be compensated for her costs for legal services.

We wish to receive written submissions from counsel on the issue of the amount of compensation, pursuant to section 51.7(7) of the *Act*. Counsel for Madam Justice Baldwin will present written submissions within seven (7) days of the release of this decision, and the response from Presenting Counsel, if any, will be provided within seven (7) days thereafter.

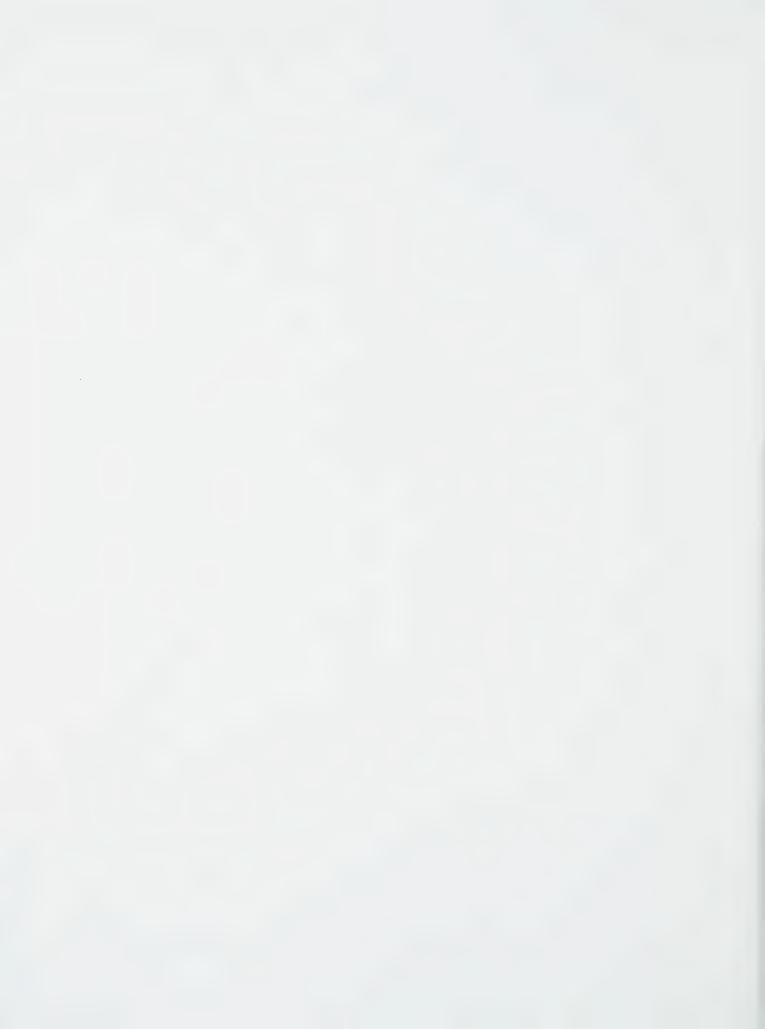
DATED at the City of Toronto, in the Province of Ontario this 10th day of May, 2002.

The Honourable **DENNIS R. O'CONNOR** Associate Chief Justice of Ontario

The Honourable Madam Justice D.K. LIVINGSTONE Ontario Court of Justice

MR. HENRY GRANT WETELAINEN MR. JULIAN PORTER, Q.C.





vue qu'elle avait exprimées plus tôt dans le rapport du Comité. tage la réaffirmation par M<sup>me</sup> la juge Baldwin des points de juge Baldwin. A notre avis, la rédaction de la lettre était davanpublic n'était pas le résultat de mesures prises par M<sup>me</sup> la du Comité. Le fait que la lettre soit parvenue dans le domaine ment le gouvernement de ne pas avoir sait suite au rapport Baldwin n'a fait aucun effort pour embarrasser politiqueune pression du public sur le gouvernement. Mme la juge lic. La lettre n'a pas été rédigée dans le but de faire exercer Baldwin n'était pas que la lettre reçoive l'attention du pub-En outre, nous notons que l'intention de Mme la juge

d'inconduite. mentionné ci-dessus, le Conseil conclut qu'il n'y a pas eu », dans le contexte des Principes de la charge judiciaire et du test de vue d'un « membre du public raisonnable, objectif et informé Ayant examiné les détails spécifiques de la plainte du point

ture qui justifieraient la conclusion d'une inconduite. l'impartialité, l'intégrité et l'indépendance de la magistra-Mme la juge Baldwin ne constituent une violation grave à Comité ni les commentaires entre parenthèses faits par magistrature pour joindre les demandes des membres du mais, à son avis, ni l'utilisation du papier à en-tête de la croit que la plainte n'était pas totalement sans fondement suivi avec le procureur général. Par conséquent, le Conseil pas été le moyen le plus approprié pour le Comité de faire le sur le papier à en-tête de son cabinet de juge n'a peut-être Notons que le fait d'envoyer la lettre des membres du Comité

Par conséquent, la plainte est rejetée.

engagés pour ses services juridiques. demniser Mme la juge Baldwin pour les frais qu'elle a judiciaires, nous recommandons au procureur général d'in-Compte tenu de l'article 51.7(5) de la Loi sur les tribunaux

échéant, auront un délai de sept (7) jours par la suite. réponse des avocats chargés de présenter le dossier, le cas les sept (7) jours suivant l'annonce de cette décision et la juge Baldwin présenteront des observations écrites dans vertu de l'article 51.7(7) de la Loi. Les avocats de M<sup>me</sup> la cats sur la question du montant de l'indemnisation en Nous souhaitons recevoir des observations écrites des avo-

.2002 ism FAIT à Toronto, dans la province d'Ontario, ce 10e jour de

Cour de justice de l'Ontario Madame la juge D.K. Livingstone Juge en chef adjoint de l'Ontario Monsieur le juge Dennis R. O'Connor

M. Henry Grant Wetelainen

M. Julian Porter, c.r.

# X A-T-IL EU INCONDUITE DANS LE CAS EN L'ESPÈCE?

magistrature, et envoyée au procureur général. M<sup>me</sup> la juge Baldwin, rédigée sur du papier à en-tête de la La plainte porte spécifiquement sur la lettre du 7 juillet de

de l'une des mesures prévues à l'article 51.6(11) de la Loi. de la justice de manière générale et nécessiterait l'application qu'il minerait la confiance du public dans l'administration capacité du juge à accomplir les fonctions de sa charge ou magistrature qu'il minerait la confiance du public dans la traire à l'impartialité, l'intégnité et l'indépendance de la « d'envoyer » la lettre et son contenu est si gravement con-Par conséquent, la question est de déterminer si le fait

: sinaninaq Du point de vue de la confiance du public, ces faits sont

- assumer les fonctions de présidente du Comité. • Le juge en chef a autorisé Mme la juge Baldwin à
- imposées dans les causes de violence familiale. n'indique que des peines spécifiques devraient être • Rien dans le rapport présenté par le Comité
- violence familiale. devraient être différents des causes alléguant la d'innocence ou le principe du doute raisonnable · Rien dans le rapport n'indique que la présomption
- Couronne la tâche d'obtenir une condamnation. aux règles de la preuve pour faciliter à la · Rien dans le rapport ne suggère des changements
- de la justice de manière générale. concerne le contenu du rapport ni l'administration fait aucun renvoi à un point particulier ni en ce qui ficiles dans les cours criminelles où je siège » ne manière dont les avocats abordent ces causes difremarqué aucun changement perceptible dans la que faite par Mme la juge Baldwin « ... je n'ai ativement à l'administration de la justice. La remardétend rien de différent du contenu du rapport rel-• La lettre du 7 juillet n'ajoute aucun élément ni ne
- telle n'était pas son intention. de violence familiale. Elle a déclaré au Conseil que qu'il y aurait partialité de sa part dans les causes interprétée par quiconque comme une indication exprimé son regret que la lettre du 7 juillet a été M<sup>me</sup> la juge Baldwin, représentée par son avocat, a

THE RESERVE NO. 10

Dans deux causes récentes, Therrien c. ministre de la Justice et autres (2001), 155 C.C.C. (3d) 1, et Moreau – Berube c. Mouveau-Brunswick (Conseil de la magistrature), 2002 C.S.C. 11, la Cour suprême du Canada a examiné les exigences relatives à une inconduite de la magistrature quoique dans le contexte des lois dans d'autres provinces qui n'ont pas la gamme entière des autres mesures prévues à l'article gamme entière des autres mesures prévues à l'article 51.6(11). Méanmoins, à notre avis, le test prévu par la Cour suprême est applicable aux conclusions d'inconduite en vertu des lois de l'Ontario.

de la pensée ou du processus décisionnel des juges. réduire de manière inadéquate l'indépendance ou l'intégrité d'un juge doit prévoir une obligation de rendre compte sans le processus suivi pour examiner les allégations d'inconduite freinant ou paralysant sur l'action judiciaire. Par conséquent, conduite d'un juge sont examinées peut avoir un effet que la manière selon laquelle les plaintes relatives à l'incette conduite. Toutefois, il est important de reconnaître sus pour remédier au préjudice qui a été occasionné par minée par la conduite d'un juge, il doit y avoir un procesdante et avec intégrité. Lorsque la confiance du public est les fonctions de leur charge de manière impartiale, indépenque le public ait confiance dans leur capacité d'accomplir ables de leur conduite judiciaire et extra-judiciaire pour l'indépendance des juges. Ceux-ci doivent être responsentre l'obligation de rendre compte de la magistrature et la magistrature), la Cour suprême a examiné la tension Dans l'affaire Moreau - Berube c. New Brunswich (Conseil de

L'objet de l'instance sur une inconduite de la magistrature est essentiellement correctif. Les dispositions prévues à l'atticle 51.6(11) doivent être invoquées au besoin pour rétablir la confiance du public à la suite de la conduite du juge.

Paraphrasant le test prévu par la Cour suprême dans Therrien et Moreau-Berube, la question examinée en vertu de l'article 51.6(11) est de déterminer si la conduite qui est reprochée est si gravement contraire à l'impartialité. l'intégrité et l'indépendance de la magistrature qu'elle a miné la confiance du public dans la capacité du juge d'accomplir les fonctions de sa charge ou l'administration de la jusplir les fonctions de sa charge ou l'administration de la justice de manière générale et qu'il est nécessaire au Conseil de la magistrature de prendre l'une des mesures prévues à l'article pour rétablir cette confiance.

Ce n'est que lorsque la conduite qui est l'objet de la plainte dépasse ce seuil qu'il faut envisager l'application des mesures prévues à l'article 51.6(11). Une fois que le Conseil a déterminé qu'il faut appliquer l'une des mesures prévues à l'article 51.6(11), il doit examiner d'abord la mesure la moins grave – un avertissement – et passer ensuite dans un ordre séquentiel à la mesure la plus grave – une recommandation de destitu-

configure. Ainsi que le professeur Nolan le souligne, l'indépendance judiciaire et la déontologie judiciaire vivent en symbiose 5. L'acceptation des décisions des tribunaux par le public et l'appui qu'il donne à celles-ci reposent sur sa configure et l'appui qu'il donne à celles-ci reposent sur sa configure et l'intégrité et en l'indépendance de la magistrature. Cette configure dépend elle-même de la mesure dans laquelle la magistrature observe des normes de conduite élevées.

Le commentaire numéro 8 se lit comme suit :

Les juges sont souvent invités à siéget à des commissions d'enquête. Avant d'accepter une telle nomination, les juges donvent étudier soigneusement les répercussions qu'elle peut avoir sur l'indépendance judiciaire. Il est arrivé que des juges membres de commissions se soient trouvés mêlés à des controverses publiques et aient été critiqués et mis dans l'embarras par les gouvernements mêmes qui les avaient nommés. Les juges doivent soigneusement examiner leur mandat, ainsi que les facteurs en cause, tels que le temps et les ressources dont ils disposent, afin de s'assurer que et les ressources dont ils disposent, afin de s'assurer que et les ressources dont compatibles avec la fonction judiciaire.

Conformément à ces principes et commentaires, M. Hunt soutient que le test d'inconduite doit être un test similaire à celui que les tribunaux ont élaboré pour chercher à protéger l'indépendance de la magistrature car l'indépendance et l'impartialité de la magistrature sont les deux pierres d'angle qui sous-tendent les déclarations faites par les tribunaux et par les organismes réglementaires judiciaires où bunaux et par les organismes réglementaires judiciaires où est examinée la question de conduite ou d'inconduite.

Le paragraphe 51.6(11) de la Loi sur les tribunaux judiciaires autorise le Conseil à choisir parmi une vaste gamme de mesures s'il trouve qu'un juge a été coupable d'inconduite.

Le Conseil peut:

- a) donner un avertissement au juge;
- b) réprimander le juge;
- c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;
- e) suspendre le juge, avec rémunération, pendant une période quelle qu'elle soit;
- suspendre le juge, sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours;
- g) recommander au procureur général la destitution du juge conformément à l'article 51.8.

WITH THE RESERVE

conduite de leur vie professionnelle. juges dans l'exercice de leurs fonctions judiciaires et la comprendre les attentes raisonnables qu'il peut avoir des déontologiques et professionnels et pour aider le public à un guide pour aider les juges à faire face aux dilemmes Ce document n'est pas un ensemble de règles. Il est plutôt

peut lire ce qui suit au paragraphe 3.2; A la page 4, sous la rubrique Le juge dans la collectivité, on

fonctions judiciaires. parence de tout conflit d'intérêt dans l'exercice de leurs Les juges doivent éviter tout conflit d'intérêt ou l'ap-

Le commentaire indique ce qui suit:

partisane. Les juges ne doivent participer à aucune activité politique

déontologie judiciaire publiés par le Conseil canadien de la Les deux avocats ont aussi fait référence aux Principes de

leurs collectivités. font face les juges dans leur vie et leur travail au sein de » qui examinent les questions déontologiques auxquelles Cette publication énonce aussi un ensemble de « principes

Sous le titre Impartialité on peut lire ce qui suit :

dans leurs décisions et tout au long du processus décisionnel. Les juges doivent être impartiaux et se montrer impartiaux

Le troisième principe à formulation générale se lit comme suit :

bien informée. la perception d'une personne raisonnable, impartiale et L'apparence d'impartialité doit être évaluée en fonction de

lire dans l'énonce ce qui suit : Sous la rubrique Indépendance de la magistrature on peut

qu'institutionnels. aire, et la manifester tant dans ses éléments individuels juges doivent donc faire respecter l'indépendance judiciercice d'une justice impartiale sous un régime de droit. Les L'indépendance de la magistrature est indispensable à l'ex-

: jins əmmoə Le commentaire numéro 5 sous cette rubrique se lit

portements douteux de juges ont tendance à miner cette la confiance du public. Les écarts de conduite et les coml'indépendance de la magistrature reposent avant tout sur normes élevées de conduite. La primauté du droit et juges ont la responsabilité collective de promouvoir des Compte tenu de l'indépendance dont ils jouissent, les

> révéler utile. plan quinquennal que notre comité a préparé si cela pourrait se Je suis disposée à vous rencontrer de nouveau pour discuter du

juge Baldwin. James Flaherty a répondu à la lettre du 7 juillet de M<sup>me</sup> la Dans une lettre portant le timbre dateur du 24 juillet 2002, M.

Voici un extrait de sa réponse:

# [TRADUCTION]

au nom des membres communautaires du Comité mixte. » rendez-vous. Je serais heureux de discuter des propositions avancées bureau, Agnes Vanya, vous contactera directement pour fixer un La personne chargée de la planification de l'horaire dans mon «... Je vous remercie d'avoir soulevé ces questions avec moi.

tre de nouveau le procureur général au courant du travail du Comité. ministère du Procureur général. Le but de la réunion était de met-Joanna Kuras, directrice de projet, Division des services aux victimes, Vivien Green, ont rencontré le procureur général, M. Flaherty, et directrice de projet, Stratégie des victimes), docteur Peter Jaffe et et politiques, Solliciteur général et Services correctionnels, et trois membres de l'ancien comité, Trinela Cane (SMA, Planification Le 31 juillet 2000, ou vers cette date, Mme la juge Baldwin et

### LA PLAINTE

istration de la justice. raison d'une telle inconduite, jeté le discrédit sur l'adminincompatible avec les fonctions de sa charge et qu'elle a, en La plainte est que M<sup>me</sup> la juge Baldwin a agi de manière

indépendante sur des questions dont elle pourrait être saisie. tions relativement à sa capacité de demeurer impartiale et groupe particulier. Une telle conduite a soulevé des quescôté des initiatives ou stratégies qui ont été présentées par un aider la direction. Par conséquent, elle s'est mise du même l'autorisation avait été accordée à Mme la juge Baldwin pour tration de la justice criminelle au-delà du cadre pour lequel tique gouvernementale touchant le domaine de l'adminisavec le groupe de la direction sur des questions de polide présenter le dossier, M. Hunt, comme un contact continu Plus précisément, l'inconduite est décrite par l'avocat chargé

# INCONDILLE

les tribunaux judiciaires. L' « inconduite judiciaire » n'est pas définie dans la Loi sur

judiciaire doit être rendue par voie d'analyse juridique. de manière exacte à notre avis, qu'une décision d'inconduite Lavocat chargé de présenter le dossier, M. Hunt, a soutenu,

du juge en chet de la Cour de justice de l'Ontario. charge judiciaire, un document préparé sous les auspices Une source pour une telle analyse serait les Principes de la

VPPENDIX

- D. I R LOCK

 Une nouvelle présentation du rapport plus conviviale et plus facile à lire et une nouvelle couverture.

• La réimpression de 2 000 exemplaires du rapport selon le nouveau format.

• La distribution du rapport à tous les organismes de la province qui sont visés par le plan de mise en oeuvre.

du public sur le problème d'une importance critique. femmes dans chaque collectivité pour maintenir l'attention cuter des progrès et questions reliés à la violence contre les ment judiciaires. Le calendrier du sommet serait de disservice communautaire) de chacun des 54 aires de recrutetants (l'un du système de justice criminelle et l'autre d'un saires. A ce moment-ci, nous cherchons à réunir deux représenmesures à prendre et la mise en oeuvre des changements nécesévidence le problème de la violence et de promouvoir les leurs enfants, l'objet du sommet est de continuer à mettre en de meurtre que connaissent toujours les femmes victimes et années et les problèmes continus de danger, de violence et et la documentation qui a été envisagée au cours des dernières en octobre-novembre 2000. Étant donné la vaste recherche privé pour tenir un sommet sur la violence contre les femmes bre de sociétés du secteur cureur général devienne un associé avec un certain nom-2) La deuxième initiative porte sur la possibilité que le pro-

Nous sommes très intéressés de créer une occasion pour mettre en place une analyse et une planification coopératives dans le cadre d'une réunion provinciale comme le sommet et nous sommes déjà au courant d'une fondation au moins qui est très intéressée à participer. »

 $M^{me}$  la juge Baldwin a envoyé la lettre du 5 juillet au procureur général de l'Ontano, M. James M. Flaherty, en y joignant une lettre datée du 7 juillet 2000 et rédigée sur du papier à en-tête de la magistrature. M^me la juge Baldwin a envoyé une copie de la lettre à Trinela Cane, Murray Segal, docteur Peter G. Jaffe, Vivien Green, Marilyn Struthers et Roach. La lettre se lit comme suit :

OBJET : TRAVAIL DU COMITÉ MIXTE DE LA

Veuillez trouver ci-joint une lettre que j'ai reçue des membres communautaires du Comité mixte de la violence familiale.

l'appuie leurs demandes et l'ajoute incidemment que je n'ai remarqué aucun changement perceptible dans la manière dont les avocats abordent ces causes difficiles dans les cours criminelles où je siège.

Le rapport final du Comité (le « rapport ») a été signé et officiellement présenté au procureur général, M. James Flaherty, au nom du gouvernement de l'Ontario, le 12 août 1999.

Le rapport a été signé par les membres du Comité, y compris  $M^{me}$  la juge Baldwin.  $M^{me}$  la juge Baldwin a personnellement signé le rapport au-dessus du titre «  $M^{me}$  la juge Lesley Baldwin (présidente) ».

Le rapport a déterminé les stratégies de mise en oeuvre des 213 recommandations du jury de l'enquête May/lles, organisées selon quatre catégories : 1) services essentiels communs; 2) intervention d'un système de justice efficace; 3) réalisation de la continuité; 4) financement et priorités

en matière de planification.

À la suite de la présentation du rapport, M<sup>me</sup> la juge Baldwin a repris ses fonctions comme juge siégeant et le ministère du Procureur général a cessé de l'Ontario pour fonds spéciaux à la Cour de justice de l'Ontario pour rémunérer le juge qui remplaçait M<sup>me</sup> la juge Baldwin.

Vers le mois de septembre 1999 ou au cours de ce mois, Mme la juge Baldwin a obtenu l'autorisation du procureur général pour faire référence au rapport lors d'une conférence internationale sur la violence familiale. La sousministre adjointe, Division des services de justice à la famille, Mme Angela Longo, a accordé cette autorisation à Mme la juge Baldwin, au nom du procureur général.

Vers le mois de mai 2000 ou au cours de ce mois,  $M^{me}$  la juge Baldwin a contacté la directrice intérimaire du groupe de travail sur la violence familiale, au ministère du Procureur général,  $M^{me}$  Linda Spears, en vue d'obtenir une version électronique du rapport.  $M^{me}$  la juge Baldwin a indiqué avoir compris que le financement allait être obtenu de la Fondation Trillium pour imprimer le rapport selon un format facile à lire.

Dans une lettre datée du 5 juillet 2000, quatre anciens membres du Comité, Roz Roach, Marilyn Struthers, Vivien Green et docteur Peter Jaffe, ont écrit à M<sup>me</sup> la juge Baldwin comme «... membres communautaires du Comité mixte de la violence familiale pour demander une action immédiate. » (lettre du 5 juillet »).

Dans leur lettre du 5 juillet, les anciens membres ont formulé la demande suivante :

[TRADUCTION]

« Nous demandons respectueusement que vous communiquiez, en votre qualité de présidente du comité, avec le ministère du Procureur général pour demander que soient prises immédiatement les deux mesures suivantes :

1) La première initiative porte sur la réimpression et la nouvelle publication de 2 000 exemplaires du rapport du Comité mixte. (Nous sommes disposés à entreprendre la réimpression

T

[TRADUCTION]

THE TAXABLE

ainsi que l'avocat de Mme la juge Baldwin, M. Levy. déposées par l'avocat chargé de présenter la cause, M. Hunt, des avocats à cette date, des observations écrites ont été En plus des éléments de preuve et des observations orales

à M<sup>me</sup> la juge Lesley M. Baldwin. ifications, a tenu une audience le 3 avril 2002 relativement bunaux judiciaires, L.R.O. de 1990, chap. 43, avec ses moden vertu des articles 51.4(18) et 51.6 de la Loi sur les tri-Le Conseil de la magistrature de l'Ontario (le « Conseil »),

# LES FAITS

Un exposé conjoint des faits a été déposé à l'audience.

Ces faits ont été résumés comme suit :

auteur de cet acte de violence. victime de violence familiale, et du suicide de Randy Iles, cadre de l'enquête de coroner sur le meurtre d'Arlene May, été créé à la suite des recommandations proposées dans le mixte de la violence familiale (« le Comité »). Le Comité a vernement de l'Ontario, a annoncé l'établissement d'un Comité En novembre 1998, le procureur général, au nom du gou-

: Stimo Oub ineviue Le procureur général, M. Charles Harnick, a établi le mandat

May et Randy lles est créé conformément au mandat suivant : Le Comité mixte sur l'enquête portant sur la mort d'Arlene

comprend: procureur général sur leur mise en oeuvre, ce qui 1) Examiner les recommandations du jury et conseiller le

violence familiale; de services et programmes portant sur la l'établissement des priorités relatives à la création fournir des conseils au procureur général sur (P

conformément aux recommandations du jury; l'ampleur des programmes actuels et prévus, tournir des conseils au procureur général sur

sur la lutte contre la violence familiale en Ontario; prévus servent à fournir un programme continu mesure dans laquelle les programmes actuels et tournir des conseils au procureur général sur la ()

recommandations du jury; grammes et services continus en réponse aux mécanismes nécessaires pour fournir les profournir des conseils au procureur général sur les

de services, selon le besoin, pour accomplir le mandat. culturels et régionaux et d'autres intervenants et fournisseurs consulter les experts, les victimes, les membres des groupes

juge Baldwin à siéger comme présidente du Comité. Après ment demandé que le juge en chef Linden autorise M<sup>me</sup> la le juge en chef à l'époque, M. Sidney Linden, et a spéciale-A l'automne 1998, le procureur général Harnick a contacté

cette affectation. pour présider le Comité. Mme la juge Baldwin a accepté autorisé à prendre un congé temporaire comme juge siégeant avoir parlé à M<sup>me</sup> la juge Baldwin, le juge en chef Linden l'a

du Comité étant donné son rôle de juge. dente dans ses propos en tant que membre et présidente n'importe quel juge dans sa position qu'elle devrait être pru-Comité. Ils ont averti la juge Baldwin comme ils auraient averti demande formulée afin qu'elle siège comme présidente du ont rencontré Mme la juge Baldwin pour discuter de la Roberts, et l'ancien juge principal régional Anton Zuraw chef adjointe et coordonnatrice des juges de paix, Marietta Lancien juge en chef Sidney Linden, l'ancienne juge en

juge Baldwin. quotidienne d'un juge siègeant en remplacement de Mme la la Cour de justice de l'Ontario pour payer la rémunération istère du Procureur général a fourni un financement spécial à fin vers la mi-août 1999. Au cours de cette période, le min-Mme la juge Baldwin a commencé le 8 janvier 1999 et a pris sièger comme présidente du Comité. Labsence autorisée de Cette période a été protogée à neuf mois pour qu'elle puisse pour une période de six mois, à compter de janvier 1999. autorisée comme juge siégeant à la Cour de justice de l'Ontario Mme la juge Baldwin a obtenu une absence temporaire

Direction générale de la condition féminine de l'Ontario. istère des Services sociaux et communautaires et de la général, du ministère des Services correctionnels, du ministère du Procureur général, du ministère du Solliciteur comité mixte étaient les sous-ministres adjoints du minet Roz Roach. Les fonctionnaires publics membres du étaient Marilyn Struthers, Vivien Green, docteur Peter Jaffe Les experts communautaires qui ont siégé au Comité de la violence familiale ainsi que de hauts fonctionnaires. perts communautaires dans le domaine de la prévention Outre Mme la juge Baldwin, le Comité était composé d'ex-

dations particulières du jury. connaissances et points de vue concernant les recommancommunautaires à des réunions pour être au courant de leurs un certain nombre d'intervenants et a invité divers experts ou de mise en oeuvre. Le Comité a tenu des consultations avec et a fourni des conseils sur des initiatives en cours d'élaboration lutte contre la violence familiale qui sont actuellement en place au courant d'une vaste gamme d'initiatives portant sur la personnel des divers ministères du gouvernement, a été tenu En accomplissant son mandat, le Comité a travaillé avec le

# CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

DANS LAFFAIRE D'UGE LESLEY M. BALDWIN
CONSEIL DE LA JUGE LESLEY M. BALDWIN

**VANNEXE** «E»

deux événements qui se produit en premier. ou jusqu'à l'âge de soixante-quinze ans, selon celui de ces (y compris le renouvellement prévu au paragraphe 42 (9) d'exercer ses fonctions jusqu'à l'expiration de son mandat

# EN CHEF ADJOINTS IDEM, JUGE EN CHEF ET JUGES

qui se produit en premier. soixante-quinze ans, selon celui de ces deux événements jusqu'à l'expiration de son mandat ou jusqu'à l'âge de Conseil de la magistrature, continuer d'exercer ses fonctions l'âge de la retraite peut, avec l'approbation annuelle du Cour de justice de l'Ontario qui est toujours en tonction à 47 (5) Le juge en chef ou le juge en chef adjoint de la

(6) Si le Conseil de la magistrature n'approuve pas le məbl

les fonctions de juge provincial. pas comme l'énonce le paragraphe (3), continuer d'exercer avec l'approbation du Conseil de la magistrature et non chef adjoint aux termes du paragraphe (5), celui-ci peut, maintien en fonction d'un juge en chef ou d'un juge en

# CRITÈRES

juge en chef et approuvés par le Conseil de la magistrature. et (6) sont prises conformément aux critères établis par le (7) Les décisions visées aux paragraphes (3), (4), (5)

annuelle est en suspens ce jour-là, le maintien en fonction en ce qui concerne les tribunaux judiciaires et que l'approbation en vigueur de l'article 16 de la Loi de 1994 modifiant des lois à (5) est antérieure, dans l'année civile, au jour de l'entrée (8) Si la date de la retraite prévue aux paragraphes (1)

loi tel qu'il existait immédiatement avant ce jour-là. du juge est traité conformément à l'article 44 de la présente peut, avec l'approbation annuelle du juge en chef, continuer l'Ontario qui est toujours en fonction à l'âge de la retraite (4) Le juge principal régional de la Cour de justice de

# IDEM, JUGES PRINCIPAUX RÉGIONAUX

soixante-quinze ans.

soixante-cinq ans.

ARTICLE 47

PARTICIPATION

s'il y en a.

RETRAITE

de l'Ontario, continuer d'exercer ses fonctions en tant que l'approbation annuelle du juge en chef de la Cour de justice

(3) Le juge qui atteint l'âge de la retraite peut, avec

ou protonotaire à plein temps avant le 2 décembre 1968 magistrat, juge d'un tribunal de la famille et de la jeuness

(2) Malgré le paragraphe (1), le juge qui a été nommé

(I) Chaque juge provincial prend sa retraite à l'âge de

# WYINLIEN EN FONCTION DES JUGES

prend sa retraite à l'âge de soixante-dix ans.

(6) Lordonnance lie la Couronne.

de participer et de présenter des observations.

personne sans avoir fait en sorte que celle-ci ait eu l'occasion d'ordonnance aux termes du paragraphe (2) qui vise une

directives et aux règles de procédure qu'il a établies aux

article, le Conseil de la magistrature se conforme aux

s'il y en a, et des exigences en matière de santé et de sécurité,

compte tenu du coût, des sources extérieures de financement,

à qui il incombe de tenir compte des besoins du juge, ordonnance causerait un préjudice injustifié à la personne

de la magistrature est convaincu que le fait de rendre une

(5) Le paragraphe (2) ne s'applique pas si le Conseil

DIRECTIVES ET RÈGLES DE PROCEDURE

(4) Lorsqu'il traite des requêtes prévues au présent

(5) Le Conseil de la magistrature ne doit pas rendre

LA COURONNE EST LIÉE

termes du paragraphe 51.1 (1).

PRÉJUDICE INJUSTIFIÉ

juge à plein temps ou à temps partiel jusqu'à l'âge de

III I A DECEMBER

A 11 1 1 A 11 10 10 10 10

Ι.

- remplacer ce juge. supérieure de justice désigne le juge qui doit remplacé et le juge en chef de la Cour justice de l'Ontario décide quel juge doit être septembre 1990. Le juge en chef de la Cour de (Division civile) immédiatement avant le 1er provincial qui a été affecté à la Cour provinciale qui est un juge provincial est remplacé par un juge Un des membres du Conseil de la magistrature
- chef de la Cour de justice de l'Ontario. Cour supérieure de justice plutôt qu'au juge en Les plaintes sont renvoyées au juge en chef de la . 2
- (11) et (11) s'appliquent avec les adaptations supérieure justice, à qui les paragraphes 51.4 principal régional compétent de la Cour la suspension provisoire sont présentées au juge Les recommandations du sous-comité concernant

## APPLICATION DES ART. 51.9, 51.10 ET 51.11

que si le juge en chef de la Cour supérieure de justice y aux juges provinciaux à qui s'applique le présent article porte sur l'évaluation de leur rendement, ne s'appliquent formation continue de ces derniers, et l'article 51.11, qui des juges provinciaux, l'article 51.10, qui porte sur la (5) Larticle 51.9, qui porte sur les normes de conduite

consent. Voir:

# **VKLICLE 42**

necessaires.

яе**д**иёте

prévue au paragraphe (2), de la magistrature pour que soit rendue l'ordonnance compte de ses besoins peut présenter une requête au Conseil unat tions essentielles du poste à moins qu'il ne soit tenu mesure, en raison d'une invalidité, de s'acquitter des 45 (1) Le juge provincial qui croit ne pas être en

# OBLIGATION DU CONSEIL DE LA MAGISTRATURE

celui-ci de s'acquitter de ces obligations. compte des besoins du juge dans la mesure qui permette à de la magistrature ordonne qu'il soit tenu du poste à moins qu'il ne soit tenu compte de ses besoins, d'une invalidité, de s'acquitter des obligations essentielles (2) S'il conclut que le juge n'est pas en mesure, en raison

> chef de la Cour de justice de l'Ontario. Cour supérieure de justice plutôt qu'au juge en Les plaintes sont renvoyées au juge en chef de la

> nécessaires. 51.4 (10) et (11) s'appliquent avec les adaptations supérieure de justice, auquel les paragraphes juge principal régional compétent de la Cour de la suspension provisoire sont présentées au Les recommandations du sous-comité au sujet , ξ

məpi

en chef de la Cour supérieure de justice y consent. rendement, ne s'appliquent aux protonotaires que si le juge continue, et l'article 51.11, qui traite de l'évaluation de leur Juges provinciaux, l'article 51.10, qui traite de leur formation (7) Latricle 51.9, qui traite des normes de conduite des

convention cadre énoncée à l'annexe de la présente loi. que les juges provinciaux reçoivent aux termes de la prestations de retraite et autres avantages sociaux et allocations (8) Les protonotaires reçoivent les mêmes traitements,

# ARTICLE 87.1

# JUGES DE LA COUR DES PETITES CRÉANCES

(Division civile) immédiatement avant le let septembre provinciaux qui ont été affectés à la Cour provinciale 87.1 (1) Le présent article s'applique aux juges

Justice de l'Ontario qui est prévu aux paragraphes 44 (1) présent article, le pouvoir du juge en chef de la Cour de exerce, à l'égard des juges provinciaux à qui s'applique le (2) Le juge en chef de la Cour supérieure de justice

# MAINTIEN EN FONCTION

Conseil de la magistrature a approuvés. décision conformément aux critères qu'il a établis et que le juge en chef de la Cour supérieure de justice, qui prend la vertu du paragraphe 47 (3) est assujetti à l'approbation du présent article de continuer d'exercer ses fonctions en al supilqqe's iup à qui s'applique le

PLAINTES

: ansupilqqs's le présent article, les dispositions spéciales suivantes plainte portée contre un juge provincial à qui s'applique (4) Lorsque le Conseil de la magistrature traite une

THE RESERVENCE

# ARTICLE 51.12

CONSULTATION

ARTICLE 51.11

# 51.12 Lorsqu'il fixe des normes de conduite en vertu

juges de cette cour ainsi que d'autres personnes s'il l'estime juge en chef de la Cour de justice de l'Ontario consulte les d'évaluation du rendement en vertu de l'article 51.11, le aux termes de l'article 51.10 et élabore un programme de l'article 51.9, élabore un plan de formation continue

**VELICLE 87** 

approprié.

# **PROTONOTAIRES**

# 87 (1) Les personnes qui étaient protonotaires de la

de la Cour supérieure de justice. Cour suprême avant le 1er septembre 1990 sont protonotaires

(2) Les protonotaires ont la compétence que leur

la Cour supérieure de justice. attribuent les règles de pratique dans les instances devant

# APPLICATION DES ART. 44 A 51.12

manière qu'aux juges provinciaux. adaptations nécessaires, aux protonotaires de la même (3) Les articles 44 à 51.12 s'appliquent, avec les

chef de la Cour de justice de l'Ontario qui est prévu aux exerce, à l'égard des protonotaires, le povoir du juge en (4) Le juge en chef de la Cour supérieure de justice

paragraphes 44 (1) et (2).

# a établis et que le Conseil de la magistrature a approuvés. rend une décision à cet effet conformément aux critères qu'il probation du juge en chef de la Cour supérieure de justice, qui fonctions en vertu du paragraphe 47 (3) est assujetti à l'ap-(5) Le droit d'un protonotaire de continuer d'exercer ses

plainte portée contre un protonotaire, les dispositions (6) Lorsque le Conseil de la magistrature traite une

: spéciales suivantes s'appliquent :

désigne le protonotaire qui doit remplacer le juge. le juge en chef de la Cour supérieure de justice de l'Ontario décide quel juge doit être remplacé et protonotaire. Le juge en chef de la Cour de justice qui est un juge provincial est remplacé par un Un des membres du Conseil de la magistrature

# **EVALUATION DU RENDEMENT**

la magistrature. une fois qu'il a été examiné et approuvé par le Conseil de rendement des juges provinciaux et le mettre en oeuvre l'Ontario peut élaborer un programme d'évaluation du 5]. [1] Le juge en chef de la Cour de justice de

# OBLIGATION DU JUGE EN CHEF

d'évaluation du rendement une fois qu'il a été approuvé (2) Le juge en chef rend public le programme

par le Conseil de la magistrature.

# OBJECTIFS

rogramme d'évaluation du rendement des juges : que le juge en chef peut chercher à réaliser en élaborant un (3) Les objectifs suivants constituent certains des objectifs

Accroître le rendement individuel des juges et le

rendement des juges dans leur ensemble.

Déterminer les besoins en formation continue.

Aider à l'affectation des juges.

Déterminer les possibilités de perfectionnement

professionnel. .4

# PORTÉE DE L'ÉVALUATION

considération. prise dans un cas particulier ne doit pas être prise en (4) Dans l'évaluation du rendement d'un juge, la décision

# CARACTÈRE CONFIDENTIEL

la personne ou les personnes qui font l'évaluation. et n'est divulguée qu'au juge, à son juge principal régional et à (5) Lévaluation du rendement d'un juge est confidentielle

# NON-ADMISSIBILITÉ, EXCEPTION

ou administratif, sauf si le juge y consent. ni devant un tribunal, qu'il soit judiciaire, quasi-judiciaire être admise en preuve devant le Conseil de la magistrature (6) L'évaluation du rendement d'un juge ne doit pas

# APPLICATION DES PAR. (5) ET (6)

tous les renseignements recueillis relativement à l'évaluation. compris dans l'évaluation du rendement d'un juge ainsi qu'à (7) Les paragraphes (5) et (6) s'appliquent à tout ce qui est

THE RESERVE NO. 10

# Reconnaître l'autonomie de la magistrature.

- 2. Maintenir la qualité supérieure du système judiciaire et assurer l'administration efficace de la justice.
- 3. Favoriser l'égalité au sein du système judiciaire et le sentiment d'inclusion à celui- ci.
- 4. Faire en sorte que la conduite des juges atteste le respect qui leur est témoigné.
- Souligner la nécessité d'assurer, par la formation continue, le perfectionnement professionnel et le développement personnel des juges ainsi que le développement de leur sensibilisation aux

# ARTICLE 51.10

questions sociales.

### FORMATION CONTINUE

51.10 (1) Le juge en chef de la Cour de justice de l'Ontario élabore un plan de formation continue des juges provin- ciaux et le met en oeuvre une fois qu'il a été examiné et approuvé par le Conseil de la magistrature.

# OBLIGATION DU JUGE EN CHEF

(2) Le juge en chef veille à ce que le plan de formation continue soit mis à la disposition du public, en français et en anglais, une fois qu'il a été approuvé par le Conseil de la magistrature.

# OBJECTIFS

- (3) La formation continue des juges vise les objectifs suivants :
- Maintenir et développer la compétence
  professionnelle.
- Maintenir et développer la sensibilisation aux questions sociales.
- Promouvoir le développement personnel.

# DÉPÔT DE LA RECOMMANDATION

(2) Le procureur général dépose la recommandation devant l'Assemblée. Si celle-ci ne siège pas, il la dépose dans les quinze jours qui suivent le début de la session suivante.

# DÉCRET DE DESTITUTION

(3) Le lieutenant-gouverneur peut prendre un décret en vue de la destitution d'un juge provincial prévue au présent article, sur demande de l'Assemblée.

### APPLICATION

(4) Le présent article s'applique aux juges provinciaux qui n'ont pas encore atteint l'âge de la retraite et aux juges provinciaux dont le maintien en fonction après avoir atteint l'âge de la retraite a été approuvé en vertu du paragraphe  $47\ (3)$ ,  $(4)\ ou\ (5)$ .

# DISPOSITION TRANSITOIRE

(5) Une plainte portée contre un juge provincial devant le Conseil de la magistrature avant le jour de l'entrée en vigueur de l'article 16 de la Loi de 1994 modifiant des lois en ve qui concerne les tribunaux judiciaires et examinée à une réunion du Conseil de la magistrature avant ce jour-là est traitée par celui-ci tel qu'il était constitué immédiatement avant ce jour-là, conformément à l'article 49 de la présente avant ce jour-là, conformément à l'article 49 de la présente

# ARTICLE 51.9

# NORMES DE CONDUILE

51.9 (1) Le juge en chef de la Cour de justice de l'Ontario peut fixer des normes de conduite des juges provinciaux et élaborer un plan pour la prise d'effet des normes, et il peut mettre les normes en application et le plan en oeuvre une fois qu'ils ont été examinés et approuvés par le Conseil de la magistrature.

# OBLIGATION DU JUGE EN CHEF

(2) Le juge en chef veille à ce que les normes de conduite soient mises à la disposition du public, en français et en anglais, une fois qu'elles ont été approuvées par le Conseil de la magistrature.

### **OBJECTIFS**

(3) Les objectifs suivants constituent certains des objectifs que le juge en chef peut chercher à réaliser en mettant en application les normes de conduite des juges :

# DIVULGATION DU NOM

Conseil n'ait, par ailleurs, rendu public le nom du juge. n'y ait eu une audience publique sur la plainte ou que le procureur général ne doit pas le divulguer à moins qu'il Conseil de la magistrature fournit le nom du juge, mais le (6) Dans sa recommandation au procureur général, le

### MONTANT DE L'INDEMNITÉ

de l'Ontario pour des services similaires. le taux maximal normalement prévu par le gouvernement selon un taux pour services juridiques qui ne dépasse pas des frais pour services juridiques du juge et est calculé du paragraphe (4) ou (5) peut se rapporter à tout ou partie (7) Le montant de l'indemnité recommandé aux termes

(8) Le procureur général verse l'indemnité au juge

conformément à la recommandation.

# ARTICLE 51.8

VERSEMENT

LOI SUR LES TRIBUNAUX JUDICIAIRES - CHAPITRE C.43 - CONSEIL DE LA MAGISTRATURE

THE RESERVE AS A RESIDENCE AS

(i)

(9

# DESTITUTION MOTIVÉE

51.8 (1) Un juge provincial ne peut être destitué que

si les conditions suivantes sont réunies:

- Conseil de la magistrature; une plainte a été portée à son sujet devant le (P
- : sairvante pour l'une des raisons suivantes : de remplir convenablement ses fonctions ou du juge en raison du fait qu'il est devenu incapable recommande au procureur général la destitution audience tenue aux termes de l'article 51.6, le Conseil de la magistrature, à l'issue d'une
- mais n'a pas remédié à l'inaptitude), compte de ces besoins, ou a été rendue personne à laquelle il incomberait de tenir causerait un préjudice injustifié à la pourrait pas être rendue parce qu'elle ne remédierait pas à l'inaptitude ou ne qu'il soit tenu compte de ses besoins de son poste (si une ordonnance pour à s'acquitter des obligations essentielles il est inapte, en raison d'une invalidité,
- l'exercice convenable de ses fonctions, (ii) il a eu une conduite incompatible avec
- charge. (iii) il n'a pas rempli les fonctions de sa

- duquel une ordonnance a été rendue en vertu Le plaignant ou le témoin à la demande Τ.
- .2 du paragraphe (9).
- n'ordonne que le nom du juge soit divulgué. à moins que le Conseil de la magistrature Le juge, si l'audience a été tenue à huis clos,

# INTERDICTION PERMANENTE DE PUBLIER

être rendus publics sans le consentement de celui-ci. plainte qui pourraient identifier le juge ne doivent jamais et le Conseil ordonne que les renseignements relatifs à la doit pas être identifié dans le rapport sans son consentement la plainte en concluant qu'elle n'était pas fondée, le juge ne paragraphe (10) et que le Conseil de la magistrature rejette (20) Si une ordonnance a été rendue en vertu du

# ARTICLE 51.7

# INDEMNISATION

# juge provincial, le Conseil de la magistrature étudie la 51.7 (1) Lorsqu'il a traité une plainte portée contre un

51.6 et du présent article en ce qui concerne la plainte. à la démarche suivie aux termes des articles 51.4, 51.5 et les frais pour services juridiques qu'il a engagés relativement question de savoir si le juge devrait être indemnisé pour

# EXAMEN DE LA QUESTION JOINT À L'AUDIENCE

l'indemnisation. de la magistrature lui joint l'examen de la question de (2) S'il tient une audience sur la plainte, le Conseil

# EXAMEN PUBLIC OU À HUIS CLOS

fait à huis clos. une audience publique sur la plainte; sinon, l'examen se Conseil de la magistrature est ouvert au public s'il y a eu (3) L'examen de la question de l'indemnisation par le

## *BECOMWANDATION*

indique le montant de l'indemnité. sens au procureur général, laquelle recommandation Conseil de la magistrature sait une recommandation en ce (4) S'il est d'avis que le juge devrait être indemnisé, le

services juridiques et indique le montant de l'indemnité. général que le juge soit indemnisé pour ses frais pour Conseil de la magistrature recommande au procureur (5) Si la plainte est rejetée à l'issue d'une audience, le Idem

THE RESERVE OF STREET

### INVALIDITE

(13) S'il conclut que le juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de le faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

### APPLICATION DU PAR. (13)

: is supplique (13) s'applique si

- a) d'une part, un facteur de la plainte était que l'invalidité influe sur le fait que le juge n'est pas en mesure de s'acquitter des obligations essentielles du poste.
- d'autre part, le Conseil de la magistrature rejette la plainte ou prend des mesures prévues aux alinéas (11) a) à f).

# PRÉJUDICE INJUSTIFIÉ

(15) Le paragraphe (13) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité,

s'il y en a.

### PARTICIPATION

(16) Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe (13) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

# LA COURONNE EST LIÉE

(17) Une ordonnance rendue aux termes du paragraphe

(13) lie la Couronne.

# RAPPORT AU PROCUREUR GÉNÉRAL

(18) Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision, sous réserve d'une ordonnance rendue en vertu du paragraphe 49 (24). Le procureur général peut rendre le rapport public s'il est d'avis qu'il y va de l'intérêt public.

# NON-IDENTIFICATION DE PERSONNES

(19) Les personnes suivantes ne doivent pas être identifiées dans le rapport :

# EXCEPTIONNELLES DIVULGATION DANS DES CIRCONSTANCES

(8) Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

# ORDONNANCES INTERDISANT LA PUBLICATION

(9) Si la plainte porte sur des allégations d'inconduite d'ordre sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

### PUBLICATION INTERDITE

(10) Dans des circonstances exceptionnelles et conformément aux critères établis aux termes du paragraphe 51.1 (1), le Conseil de la magistrature peut rendre une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte.

### WESNBES

(11) Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclut qu'il y non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconduite de la part du juge, il peut, selon le cas :

- a) donner un avertissement au juge;
- b) réprimander le juge;
- c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- d) ordonner que le juge prenne des dispositions ou un précises, telles suivre une formation ou un traitement, comme condition pour continuer de sièget à titre de juge;
- e) suspendre le juge, avec rémunération, pendant une période quelle qu'elle soit;
- or suspendre le juge, sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours;
- g) recommander au procureur général la destitution
- du juge conformément à l'article 51.8. Idem

(12) Le Conseil de la magistrature peut adopter toute combinaison des mesures énoncées aux alinéas (11) a) à f).

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# ARTICLE 51.6

# DECISION DU CONSEIL

tenir une audience, il le fait conformément au présent article. 51.6 (1) Lorsque le Conseil de la magistrature décide de

# COMPÉTENCES LÉGALES VAPLICATION DE LA LOI SUR L'EXERCICE DES

l'exception de l'article 4 et du paragraphe 9 (1), s'applique (2) La Loi sur l'exercice des compétences légales, à

à l'audience.

# RÈGLES DE PROCÉDURE

sappliquent à l'audience. (I) I.I & stablies aux termes du paragraphe (I) I.I & (3) Les règles de procédure que le Conseil de la

# LOBJET DE L'AUDIENCE COMMUNICATION CONCERNANT

avocats ou mandataires ont été avisés et ont l'occasion de l'objet de l'audience, sauf si toutes les parties et leurs un mandataire ou une autre personne, pour ce qui est de directement ni indirectement avec une partie, un avocat, participent à l'audience ne doivent pas communiquer ni (4) Les membres du Conseil de la magistrature qui

participer.

### EXCEPTION

aux parties pour leur permettre de présenter des observations la nature des conseils donnés par l'avocat est communiquée faire aider conformément au paragraphe 49 (21), auquel cas Conseil de la magistrature d'engager un avocat pour se (5) Le paragraphe (4) n'a pas pour effet d'empêcher le

quant au droit applicable.

### **PARTIES**

sont les parties à l'audience. (6) Le Conseil de la magistrature détermine quelles

# EXCEPTION, AUDIENCES À HUIS CLOS

sur ceux de la tenue d'une audience publique. avantages du maintien du caractère confidentiel l'emportent critères établis aux termes du paragraphe 51.1 (1), que les l'audience à huis clos s'il décide, conformément aux de la magistrature peut tenir la totalité ou une partie de (7) Dans des circonstances exceptionnelles, le Conseil

> rejeter la plainte, (i)

comme le prévoit le paragraphe 51.4 (51)). assortissant ou non le renvoi de conditions renvoyer la plainte au juge en chef, en (ii)

tenir une audience aux termes de l'article (iii)

### RAPPORT

la plainte mais sans identifier le plaignant ni le juge. les résultats de la médiation en fournissant un résumé de plainte, le Conseil de la magistrature peut rendre publics (9) S'il approuve la décision prise au sujet de la

# RENVOI AU CONSEIL

à huis clos, et peut, selon le cas: au Conseil de la magistrature, lequel examine la question, médiation, le plaignant ou le juge peut renvoyer la plainte (10) A n'importe quel moment pendant ou après la

rejeter la plainte;

le paragraphe 51.4 (15); ou non le renvoi de conditions comme le prévoit renvoyer la plainte au juge en chef, en assortissant (9

tenir une audience aux termes de l'article 51.6. ()

# DES COMPÉTENCES LÉGALES NON-APPLICATION DE LA LOI SUR L'EXERCICE

prévus aux paragraphes (8) et (10). s'applique pas aux travaux du Conseil de la magistrature (11) La Loi sur l'exercice des compétences légales ne

# AVIS AU JUGE ET AU PLAIGNANT

brièvement les motifs dans le cas d'un rejet. munique sa décision au juge et au plaignant, en exposant paragraphe (8) ou (10), le Conseil de la magistrature com-(12) Une fois qu'il s'est prononcé conformément au

# DIRECTIVES ET RÈGLES DE PROCÉDURE

paragraphe 51.1 (1). aux règles de procédure qu'il a établies aux termes du Conseil de la magistrature se conforme aux directives et et se prononce aux termes des paragraphes (8) et (10), le (13) Lorsqu'il étudie des rapports, examine des questions

- 11 1 A 1 A 60 V

Idem

de la procédure de médiation dans les circonstances suivantes: (2), les critères doivent prévoir que les plaintes sont exclues (5) Sans préjudice de la portée générale du paragraphe

- plainte que la médiation serait impraticable. et celui du juge relativement à l'objet de la si important entre le compte rendu du plaignant entre le plaignant et le juge, ou il existe un écart Il existe un déséquilibre important du pouvoir
- . 54 personne. prévu dans une disposition du Code des droits de illicite de discrimination ou de harcèlement ination ou de harcèlement en raison d'un motifi d'ordre sexuel ou sur une allégation de discrim-La plainte porte sur une allégation d'inconduite .2
- sur la plainte. Lintérêt public requiert la tenue d'une audience .ε

## CONSEILS JURIDIQUES

et s'ils en ont eu l'occasion. obtenir des conseils juridiques de personnes indépendantes que si le plaignant et le juge y consentent, s'ils peuvent (4) Une plainte ne peut être renvoyée à un médiateur

# MÉDIATEUR QUALIFIÉ

plus, au moins une de ces personnes doit satisfaire à ces médiation est menée de concert par deux personnes ou une formation en médiation et qui n'est pas un juge. Si la (5) Le médiateur doit être une personne qui a reçu

exigences.

### IMPARTIALITE

(6) Le médiateur est impartial.

### EXCLUSION

51.4 (17) ou (18) ne doit participer à la médiation. magistrature qui a traité la plainte en vertu du paragraphe sur la plainte et aucun des membres du Conseil de la (7) Aucun des membres du sous-comité qui a enquêté

# EXYMEN DYR LE CONSEIL

lequel étudie, à huis clos, le rapport et peut : fait l'objet de la plainte, au Conseil de la magistrature, de la médiation, sans identifier le plaignant ni le juge qui (8) Le médiateur présente un rapport sur les résultats

- approuver la décision prise au sujet de la plainte;
- : silduq têrêt public si le Conseil est d'avis que la décision n'est pas si la médiation n'aboutit pas à une décision ou (9

- tenir une audience aux termes de l'article 51.6; (B
- rejeter la plainte; (9
- ou non le renvoi de conditions comme le prévoit renvoyer la plainte au juge en chef, en assortissant ()
- le paragraphe (15);
- à l'article 51.5. renvoyer la plainte à un médiateur conformément (p

# L'EXERCICE DES COMPÉTENCES LÉGALES NON-APPLICATION DE LA LOI SUR

prévus aux paragraphes (17) et (18). s'applique pas aux travaux du Conseil de la magistrature (19) La Loi sur l'exercice des compétences légales ne

# AVIS AU JUGE ET AU PLAIGNANT

exposant brièvement les motifs dans le cas d'un rejet. communique sa décision au juge et au plaignant, en paragraphe (17) ou (18), le Conseil de la magistrature (20) Une fois qu'il s'est prononcé conformément au

# DIRECTIVES ET RÈGLES DE PROCÉDURE

le Conseil de la magistrature a établies aux termes du conforme aux directives et aux règles de procédure que termes des paragraphes (13) et (15), le sous-comité se dations en vertu du paragraphe (8) et se prononce aux (21) Lorsqu'il mène des enquêtes, sait des recomman-

paragraphe 51.1 (1).

Idem

paragraphe 51.1 (1). aux règles de procédure qu'il a établies aux termes du Conseil de la magistrature se conforme aux directives et se prononce aux termes des paragraphes (17) et (18), le (22) Lorsqu'il examine des rapports et des plaintes et

# ARTICLE 51.5

MÉDIATION

procédure de médiation pour les plaignants et pour les  $51.5\,(1)\,{\rm Le}$  Conseil de la magistrature peut établir une

juges qui tont l'objet de plaintes.

# CRITERES

la procédure les plaintes qui ne se prêtent pas à la médiation. de médiation, il doit aussi établir des critères pour exclure de (2) Si le Conseil de la magistrature établit une procédure

# CONTRE CERTAINS JUGES **EXCEPTION: PLAINTES DÉPOSÉES**

juge selon la recommandation du sous-comité.. supérieure de justice, qui peut suspendre ou réaffecter le la plainte est présentée au juge en chef de la Cour recommandation prévue au paragraphe (8) en ce qui concerne qui est membre du Conseil de la magistrature, toute la Cour de justice de l'Ontario ou le juge principal régional la Cour de justice de l'Ontario, un juge en chef adjoint de (12) Si la plainte est déposée contre le juge en chef de

# DÉCISION DU SOUS-COMITÉ

(13) Lorsqu'il a terminé son enquête, le sous-comité,

selon le cas:

LOI SUR LES TRIBUNAUX JUDICIAIRES - CHAPITRE C.43 - CONSEIL DE LA MAGISTRATURE

- rejette la plainte; (P
- renvoie la plainte au juge en chet; (9

- i larticle 51.5; renvoie la plainte à un médiateur conformément ()
- qu'il lui recommande ou non de tenir une (p renvoie la plainte au Conseil de la magistrature,
- audience aux termes de l'article 51.6.
- (14) Le sous-comité ne peut rejeter la plainte ou la Idem
- au Conseil de la magistrature. membres en conviennent, sinon, la plainte doit être renvoyée renvoyer au juge en chef ou à un médiateur que si les deux

# CONDITIONS DU RENVOI AU JUGE EN CHEF

renvoyer la plainte au juge en chef. la plainte y consent, assortir de conditions la décision de (15) Le sous-comité peut, si le juge qui fait l'objet de

### RAPPORT

plainte. sans identifier le plaignant ni le juge qui fait l'objet de la rejetée ou renvoyée au juge en chet ou à un médiateur, un rapport sur sa décision concernant toute plainte qui est (16) Le sous-comité présente au Conseil de la magistrature

# POUVOIR DU CONSEIL DE LA MAGISTRATURE

ou exiger du sous-comité qu'il lui renvoie la plainte. à huis clos, et peut approuver la décision du sous-comité (17) Le Conseil de la magistrature examine le rapport,

məpi

(18) Le Conseil de la magistrature examine, à huis

selon le cas : clos, chaque plainte que le sous-comité lui renvoie et peut,

# ROTATION DES MEMBRES

(2) Les membres admissibles du Conseil de la magistrature

siègent tous au sous-comité par rotation.

(5) Le sous-comité rejette la plainte sans autre forme REJET

constitue un abus de procédure. du Conseil de la magistrature, qu'elle est frivole ou qu'elle d'enquête si, à son avis, elle ne relève pas de la compétence

(4) Si la plainte n'est pas rejetée aux termes du paragraphe ENQUÊTE

# (ξ), le sous-comité mène les enquêtes qu'il estime appropriées.

(5) Le sous-comité peut engager des personnes, y compris EXPERTS

des avocats, pour l'aider dans la conduite de son enquête.

# ENQUÊTE À HUIS CLOS

(6) Lenquête est menée à huis clos.

# LEXERCICE DES COMPÉTENCES LÉGALES NON-APPLICATION DE LA LOI SUR

(7) La Loi sur l'exercice des compétences légales ne

s'applique pas aux activités du sous-comité.

# RECOMMANDATIONS PROVISOIRES

à un autre endroit, jusqu'à ce qu'une décision définitive juge qui fait l'objet de la plainte ou l'affectation de celui-ci principal régional la suspension, avec rémunération, du (8) Le sous-comité peut recommander à un Juge

concernant la plainte ait été prise.

(9) La recommandation est présentée au juge principal məpi

# POUVOIR DU JUGE PRINCIPAL RÉGIONAL est présentée à un autre juge principal régional.

Conseil de la magistrature, auquel cas la recommandation

affecté, sauf si le juge principal régional est membre du

régional nommé pour la région à laquelle le juge est

réaffecter le juge selon la recommandation du sous-comité. (10) Le juge principal régional peut suspendre ou

# POUVOIR DISCRÉTIONNAIRE

sous-comité n'est pas assujetti à l'administration ni à la régional d'accepter ou de rejeter la recommandation du (11) Le pouvoir discrétionnaire qu'a le juge principal

surveillance de la part du juge en chef.

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être portées en français ou en anglais. (2) Les plaintes contre des juges provinciaux peuvent

Idem

a droit, sur demande, à ce qui suit : ou le juge qui fait l'objet d'une plainte et qui parle français anglais, mais le plaignant ou le témoin qui parle français (3) Laudience prévue à l'article 51.6 est menée en

documents qui sont en anglais et qui seront avant l'audience, une traduction en français des (P

les services d'un interprète à l'audience; (9

examinés à l'audience;

parties de l'audience qui se déroulent en anglais. l'interprétation simultanée en français des ()

l'article 51.7 en ce qui concerne la question de l'indemnisation, qu'a effectué le Conseil de la magistrature aux termes de menées aux termes de l'article 5.1.5 et à l'examen (4) Le paragraphe (3) s'applique également aux шәрі

si le paragraphe 51.7 (2) s'applique.

#### AUDIENCE OU MÉDIATION BILINGUE

menée convenablement de cette manière. paragraphe (3) soit bilingue s'il est d'avis qu'elle peut être qu'une audience ou une médiation à laquelle s'applique le (5) Le Conseil de la magistrature peut ordonner

#### PARTIE D'AUDIENCE OU DE MÉDIATION

nécessaires. les paragraphes (7) et (8) s'appliquent avec les adaptations à une partie de l'audience ou de la médiation, auquel cas (6) Un ordre prévu au paragraphe (5) peut s'appliquer

: əuguilid Au cours d'une audience ou d'une médiation (7) шәрі

et ils sont consignés dans la langue de présentation; peuvent être présentés en français ou en anglais les témoignages oraux et les observations orales (P

on Pautre langue; les documents peuvent être déposés dans l'une (9

peuvent avoir lieu dans l'une ou l'autre langue; dans le cas d'une médiation, les discussions ()

dans l'une ou l'autre langue. médiateur, selon le cas, peuvent être rédigés les motifs d'une décision ou le rapport du (p

шәрі

traduction des documents déposés ou des motifs ou rapports ou des discussions qui ont lieu dans l'autre langue et à une l'interprétation simultanée des témoignages, des observations parle qu'une des deux langues, il a droit, sur demande, à si le plaignant ou le juge qui fait l'objet de la plainte ne (8) Lors d'une audience ou d'une médiation bilingue,

rédigés dans l'autre langue.

#### ARTICLE 51.3

#### **PLAINTES**

inconduite de la part d'un juge provincial. de la magistrature une plainte selon laquelle il y aurait eu 51.3 (1) Toute personne peut porter devant le Conseil

2) Si une allégation d'inconduite contre un juge шәрі

devant celui-ci. magistrature, elle est traitée comme une plainte portée provincial est présentée à un membre du Conseil de la

Idem

Conseil de la magistrature. judiciaire et sur la façon de porter plainte, et le renvoie au sur le rôle du Conseil de la magistrature au sein du système cas, fournit à l'auteur de l'allégation des renseignements général, cet autre juge ou le procureur général, selon le provincial est présentée à un autre juge ou au procureur (5) Si une allégation d'inconduite contre un juge

#### CONDUITE DE L'AFFAIRE

Conseil de la magistrature est chargé de la conduite de l'affaire. (4) Une tois qu'une plainte a été portée devant lui, le

#### RENSEIGNEMENTS SUR LA PLAINTE

plainte donnée. magistrature peut confirmer ou nier qu'il a été saisi d'une (5) A la demande de toute personne, le Conseil de la

#### ARTICLE 51.4

#### EXAMEN PAR UN SOUS-COMITÉ

qui n'est ni juge ni avocat. d'un juge provincial autre que le juge en chef et d'une personne est examinée par un sous-comité du Conseil qui se compose Strature regue par le Conseil de la magistrature

THE RESERVE

#### ARTICLE 51.1

# ARTICLE 51

#### **KECLES**

: jins inp publiques ses propres règles de procédure, y compris ce 51.1 (1) Le Conseil de la magistrature établit et rend

- Lapplication de l'article 45. Des directives et les règles de procédure pour Ι.
- Des directives et les règles de procédure pour .2
- lapplication du paragraphe 51.4 (21).
- l'application du paragraphe 51.4 (22). Des directives et les règles de procédure pour
- paragraphe 51.5 (2). Sil y a lieu, des critères pour l'application du
- root l'application du paragraphe 5.12). S'il y a lieu, des directives et les règles de procédure
- Les règles de procédure pour l'application du
- Des critères pour l'application du paragraphe (E) 0.12 adqragaraq
- Des critères pour l'application du paragraphe .8 .(7) 8.18
- Des critères pour l'application du paragraphe
- .(01) 8.18

#### TOI SUR LES RÉGLEMENTS

règles, directives ou critères établis par le Conseil de la (2) La Loi sur les règlements ne s'applique pas aux

TOI SUR L'EXERCICE DES COMPÉTENCES

magistrature. compétences légales ne s'appliquent pas au Conseil de la (3) Les articles 28, 29 et 33 de la Loi sur l'exercice des

magistrature.

ARTICLE 51.2

#### LANGUES OFFICIELLES DANS LES TRIBUNAUX

du paragraphe 51.1 (1) le sont en français et en anglais. 51 (1), (3) et (4) et tout ce qui est rendu public aux termes 51.2 (1) Linformation fournie aux termes des paragraphes

#### INFORMATION AU PUBLIC

obtenir de l'aide en vue de porter plainte. sur ce que les membres du public peuvent faire pour sujet du système judiciaire, y compris des renseignements palais de justice et ailleurs, de l'information à son sujet et au 51 (1) Le Conseil de la magistrature fournit, dans les

Məbl

culturels et linguistiques et sur l'importance de tenir compte magistrature met l'accent sur l'élimination des obstacles (2) Lorsqu'il fournit de l'information, le Conseil de la

des besoins des personnes handicapées.

#### VIDE VO PUBLIC

l'aide pour préparer des documents en vue de porter plainte. dispositions afin que les membres du public reçoivent de (3) Au besoin, le Conseil de la magistrature prend des

#### ACCÈS PAR TÉLÉPHONE

du système judiciaire, y compris un service pour sourds. l'information à son sujet, notamment sur son rôle au sein province, un service téléphonique gratuit d'accès à de (4) Le Conseil de la magistrature offre, à l'échelle de la

#### PERSONNES HANDICAPÈES

exigences en matière de santé et de sécurité, s'il y en a. des sources extérieures de financement, s'il y en a, et des ne lui cause un préjudice injustifié, compte tenu du coût, tenu compte de leurs besoins, à ses frais, à moins que cela plaintes, le Conseil de la magistrature sait en sorte qu'il soit participer efficacement à la procédure à suivre pour les (5) Afin de permettre aux personnes handicapées de

#### RAPPORT ANNUEL

juge ou le plaignant. contenir de renseignements qui pourraient identifier le exposé de la décision. Toutefois, le rapport ne doit pas l'année, un sommaire de la plainte, les conclusions et un à l'égard de toutes les plaintes reçues ou traitées pendant annuel, en français et en anglais, sur ses activités, y compris, magistrature présente au procureur général un rapport (6) Après la fin de chaque année, le Conseil de la

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devant l'Assemblée. au lieutenant-gouverneur en conseil et le dépose alors (7) Le procureur général présente le rapport annuel

THE TWO IS NOT

(9

le juge en chef adjoint de la Cour de justice de l'Ontario préside les réunions et les audiences du Conseil au lieu du juge en chef, de la Cour vertu du paragraphe 49 (3) au lieu du juge en chef, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario aux termes de l'alinéa 51.5 (8) b) (ii) ou 51.4 (18) c), du sous- alinéa 51.5 (8) b) (ii) ou de l'alinéa 51.5 (10) b) est fait au juge en chef de la Cour supérievre de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

#### SUSPENSION DU JUGE EN CHEF

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(2) Si le juge en chef de la Cour de justice de l'Ontario est suspendu en vertu du paragraphe 51.4 (12) :

d'une part, les plaintes qui seraient par ailleurs renvoyées au juge en chef de la Cour de justice de l'Ontario aux termes des alinéas 51.4 (18) b), du sous-alinéa 51.5 (8) b) (ii) et de l'alinéa 51.5 (10) b) sont renvoyées au juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

d'autre part, les approbations annuelles qui seraient par alleurs accordées ou refusées par le juge en chef de la Cour de justice de l'Ontario jusqu'à adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

### ADJOINT OU UN JUGE PRINCIPAL RÉGIONAL

(3) Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé aux termes de l'alinéa 49 (2) c) fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario provinciale au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

#### DOSSIERS CONFIDENTIELS

(24) Le Conseil de la magistrature ou un sous-comité peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos est confidentiel et ne doit pas être divulgué ni rendu public.

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(25) Le paragraphe (24) s'applique, que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre

#### EXCEPTIONS

(26) Le paragraphe (24) ne s'applique pas aux renseignements ni aux documents qui satisfont à l'une ou l'autre des conditions suivantes :

a) leur divulgation par le Conseil de la magistrature est exigée par la présente loi;

b) ils n'ont pas été traités comme des documents ou renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

#### IMMUNILĘ

(27) Sont irrecevables les actions ou autres instances en dommages-intérêts introduites contre le Conseil de la magistrature, un de ses membres ou de ses employés ou quiconque agit sous son autorité pour un acte accompli de bonne foi dans l'exercice effectif ou censé tel de ses fonctions.

#### RÉMUNÉRATION

(28) Les membres qui sont nommés aux termes de l'alinéa (2) g) ont le droit de recevoir la rémunération quotidienne que fixe le lieutenant-gouverneur en conseil.

# VELICLE 50

DE LA COUR DE JUSTICE DE L'ONTARIO PLAINTE DÉPOSÉE CONTRE LE JUGE EN CHEF

50 (1) Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte :

le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise;

- II - I & I N. N. V

Un membre, au moins, ne doit être ni juge .2

- préside le comité. la Cour d'appel désigné par le juge en chet, Le juge en chef de l'Ontario, ou un autre juge de
- des membres du comité et en déterminer la Conseil de la magistrature peut fixer le nombre Sous réserve des dispositions 1, 2 et 3, le
- Tous les membres du comité constituent le quorum.

#### **PRÉSIDENCE**

composition.

neavuon ab de partage des voix, avoir voix prépondérante en votant paragraphe (14) ou (16) a le droit de voter et peut, en cas (18) Le président d'un comité formé en vertu du

#### PARTICIPATION AUX ÉTAPES DE LA PROCÉDURE

sur une plainte ne doivent pas, selon le cas: (19) Les membres du sous-comité qui a enquêté

- ;(01) no (8)  $\xi$ . [ $\xi$  and  $\xi$  arange and  $\xi$  no (81) no (71) 4.12 addergered ub earmes aux straiter la paragraphe 51.4
- participer à une audience sur la plainte prévue (q

à l'article 51.6.

à une audience sur la plainte prévue à l'article 51.6. ou du paragraphe 51.5 (8) ou (10) ne doivent pas participer (81) uo (71) 4.12 adqragraphe du paragraphe (18) uo (19) (20) Les membres du Conseil de la magistrature qui ont məpi

#### EXPERTS

personnes, y compris des avocats, pour l'aider. (21) Le Conseil de la magistrature peut engager des

#### SERVICES DE SOUTIEN

aux services de soutien à cette fin. administre séparément une partie de son budget affecté besoins des membres qui ne sont ni juges ni avocats et efficacement. Il prête une attention particulière aux continue, pour permettre à ses membres de participer de soutien, y compris l'orientation initiale et la formation (22) Le Conseil de la magistrature fournit des services

Mabl

une invalidité. soutien pour répondre aux besoins de tout membre qui a une partie de son budget affecté aux services de (23) Le Conseil de la magistrature administre séparément

#### VACANCE

pour terminer le mandat. possédant des compétences similaires peut être nommé l'alinéa (2) d), f) ou g) devient vacant, un nouveau membre (12) Si le poste d'un membre nommé aux termes de

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s'appliquent, sous réserve des paragraphes (15) et (17) : (13) Les règles suivantes concernant le quorum

constituent le quorum. Huit membres, y compris le président,

- doivent être des juges et au moins quatre autres 7 Au moins la moitié des membres présents
- membres ne doivent pas être des juges.

#### COMITÉ D'EXAMEN

pouvoirs que le Conseil de la magistrature. termes de l'article 51.7 et, à cette fin, le comité a les mêmes d'examiner la question concernant l'indemnisation aux to (01) no (8) d. [3] and paragraph on (81) no (71) 4. [3] comité en vue de traiter une plainte visée au paragraphe (14) Le Conseil de la magistrature peut former un

formé en vertu du paragraphe (14): (15) Les règles suivantes s'appliquent à un comité шәрі

personne qui n'est ni juge ni avocat. autres que le juge en chef, d'un avocat et d'une Le comité se compose de deux juges provinciaux

magistrature, préside le comité. Un des juges, désigné par le Conseil de la .2

Quatre membres constituent le quorum.

#### COMITÉS D'AUDIENCE

mêmes pouvoirs que le Conseil de la magistrature. aux termes de l'article 51.7 et, à cette fin, le comité a les 51.6 et d'examiner la question concernant l'indemnisation comité en vue de tenir une audience en vertu de l'article (16) Le Conseil de la magistrature peut former un

(17) Les règles suivantes s'appliquent à un comité Idem

La moitié des membres du comité, y compris le

formé en vertu du paragraphe (16):

doivent pas être des juges. président, doivent être des juges et la moitié ne

THE TAX STREET

#### TAGNAM

de juge principal régional. magistrature jusqu'à ce qu'il cesse d'exercer les fonctions termes de l'alinéa (2) c) demeure membre du Conseil de la aux summor ses ing régional qui est nommé aux

(6) Le mandat des membres qui sont nommés aux məbl

pas renouvelable, termes des alinéas (2) d), f) et g) est de quatre ans et n'est

#### MANDATS DE DURÉES DIVERSES

première fois aux termes de l'alinéa (2) g) est de six ans. l'alinéa (2) d) et de deux des membres nommés pour la membres nommés pour la première fois aux termes de (7) Malgré le paragraphe (6), le mandat d'un des

#### *PRESIDENCE*

paragraphe 47 (5). tenues par celui-ci pour l'application de l'article 45 et du sur des plaintes portées contre certains juges, et les réunions et les audiences du Conseil de la magistrature qui portent Cour d'appel désigné par le juge en chef, préside les réunions (8) Le juge en chef de l'Ontario, ou un autre juge de la

шәрі

magistrature. préside les autres réunions et audiences du Conseil de la ou un autre juge de cette cour désigné par le juge en chef, (9) Le juge en chef de la Cour de justice de l'Ontario

partage des voix, avoir voix prépondérante en votant de (10) Le président a le droit de voter et peut, en cas de шәрі

'neavuon

#### ET À HUIS CLOS AUDIENCES ET RÉUNIONS PUBLIQUES

clos, sauf disposition contraire de la présente loi. Ses autres audiences et réunions peuvent être tenues à huis au public, à moins que le paragraphe 51.6 (7) ne s'applique. ettesture prévues aux articles 51.6 et 51.7 sont ouvertes (11) Les audiences et les réunions du Conseil de la

#### CONSEIL DE LA MAGISTRATURE JUDICIAIRES - CHAPITRE C.43 LOI SUR LES TRIBUNAUX

#### ARTICLE 49

#### CONSEIL DE LA MAGISTRATURE

Council en anglais. l'Ontario en français et sous le nom de Ontario Judicial maintenu sous le nom de Conseil de la magistrature de 49 (1) Le Conseil de la magistrature de l'Ontario est

#### COMPOSITION

(2) Le Conseil de la magistrature se compose:

- de la Cour d'appel désigné par le juge en chef; du juge en chef de l'Ontario ou d'un autre juge (P
- Cour de justice de l'Ontario; juge en chef, et du juge en chef adjoint de la ou d'un autre juge de cette cour désigné par le du juge en chef de la Cour de justice de l'Ontario, (q
- du procureur général; gouverneur en conseil sur la recommandation de l'Ontario, nommé par le lieutenantd'un juge principal régional de la Cour de justice ()
- de deux juges de la Cour de justice de l'Ontario (P
- Canada ou d'un autre conseiller de la Société du du trésorier de la Société du barreau du Hauti-(2 nommés par le juge en chef;
- du barreau du Haut-Canada, nommé par la Société d'un avocat qui n'est pas conseiller de la Société J barreau qui est avocat désigné par le trésorier;
- en conseil sur la recommandation du procureur avocats, nommées par le lieutenant-gouverneur de quatre personnes qui ne sont ni juges ni (3 du barreau;

#### MEMBRES TEMPORAIRES

général.

peuvent autrement être satisfaites. exigences des paragraphes (13), (15), (17), (19) et (20) ne autre juge provincial, en vue de traiter une plainte, si les magistrature à titre de membre temporaire au lieu d'un peut nommer un juge de cette division au Conseil de la (3) Le juge en chef de la Cour de justice de l'Ontario

# VUNEXE «D»

# CONSEIL DE LA MAGISTRATURE CONSEIL DE LA MAGISTRATURE

Les textes de la Loi sur les tribunaux judiciaires, c. C-43 qui suivent ne doivent pas être considérés comme les textes authentiques, lesquels se trouvent dans les volumes officiels et les codifications administratives imprimés par Publications Ontario.

la Cour suprême du Canada dans une publication intitulée Recent Developments.

CONGÉ AUTOFINANCÉ: Dans le but de fournir un accès aux occasions éducatives qui se situent hors des paramètres des programmes de formation habituellement offerts aux juges, la Cour de justice de l'Ontario a élaboré une politique de congé autofinancé qui permet aux nombre d'années en vue de prendre une certain nombre d'années en vue de prendre une période de congé autofinancé maximale de douze mois. L'approbation préalable est nécessaire pour ce genre de congé et un comité de révision des pairs examine les demandes et choisit les juges qui seront autorisés à bénéficier d'une telle option.

RÉUNIONS RÉGIONALES: La plupart des sept régions de la Cour tiennent des réunions régionales annuelles. Bien que ces réunions fournissent principalement une occasion d'examiner des questions administratives/de gestion régionale, certaines d'entre elles comportent aussi un volet éducatif. Tel est le cas, par exemple, de la réunion régionale du nord où les juges des régions du Nord-Est et du Nord-Ouest de la province se réunissent et abordent des sujets de nature éducative qui sont d'un intérêt spécial au nord, comme l'isolation des juges, le au nord, comme l'isolation des juges, le deplacement et la justice autochtone.

Outre les programmes de formation mentionnés ci-dessus, la formation fondamentale des juges demeure une démarche autonome et s'effectue, entre autres, par le biais des discussions avec les pairs, de la lecture et de la recherche personnelle.

un certain nombre de programmes de formation dans tout le pays à l'intention des juges nommés par les autorités provinciales et fédérales. Les juges de la Cour de justice de l'Ontario participent et continueront de participer aux programmes de l'IVM, selon l'emplacement et le sujet traité. Le juge en chef est membre du conseil d'administration de l'IVM.

La Cour de justice de l'Ontario participe avec l'INM dans un programme conjoint qui verra l'embauchage d'un directeur d'éducation pour la Cour qui sera également responsable de la coordination et du développement des programmes pour les juges de nomination provinciale dans d'autres provinces.

En septembre 2002, la Cour de justice de l'Ontario et l'IMM ont présenté conjointement une conférence sur le droit sur la protection de l'enfance. Des juges fédéraux et provinciaux des différentes régions du pays ont participé à la conférence.

### EDUCATIVES RESSOURCES

intitulée Items of Interest. jurisprudence dans sa publication périodique des mises à jour sur les textes législatifs et la sur des points particuliers. Il fournit en outre répond aux demandes de recherche des juges ique ou par télécopieur. Le Centre de recherche personne, par téléphone, par courrier électronde soutien. On peut accéder au Centre en trois avocats recherchistes et d'un personnel système de recherche informatisé, dispose de composé d'une bibliothèque juridique et d'un de ville, à Toronto. Le Centre de recherche, de justice de l'Ontario situé à l'ancien hôtel ont accès au Centre de recherche de la Cour Les juges de la Cour de justice de l'Ontario CENTRE DE RECHERCHE JUDICIAIRE:

RECENT DEVELOPMENTS: M. le juge lan MacDonnell fournit également à tous les juges intéressés de la Cour de justice de l'Ontario un résumé et des commentaires sur les décisions actuelles de la Cour d'appel de l'Ontario et de actuelles de la Cour d'appel de l'Ontario et de

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Le processus prévoit la présentation d'une demande par un juge pour participer à de tels programmes, un comité de sélection par des pairs et un mécanisme d'évaluation du programme. Ce programme est fonction des fonds disponibles comme le détermine le Secrétariat de la formation chaque année.

Toutefois, le Secrétariat de la formation a créé un comité de participation aux conférences chargé d'examiner les demandes individuelles de financement présentées par les juges qui souhaitent participer à que ceux organisés par la Cour de justice de l'Ontario. Le financement, lorsqu'il est accordé, ne couvre pas généralement pas 100 % des coûts puisqu'il vise à aider les juges qui sont prêts à dépenser personnellement une certaine somme pour dépenser personnellement une certaine somme pour participer à ces activités.

COURS D'INFORMATIQUE: Aux termes d'un contrat conclu avec un fournisseur, la Cour de justice de l'Ontario a organisé et continue d'organiser une série de cours d'informatique à l'intention des juges de la Cour de justice de l'Ontario. Ces cours étaient organisés selon les compétences des participants et l'endroit où ils se trouvaient et étaient offerts à différentes dates partout dans la province. Généralement, les partout dans la province. Généralement, les desponsable de la formation pour participer à des cours sur les bases de l'informatique, le traitement de texte ainsi que l'enregistrement et traitement de texte ainsi que l'enregistrement et l'extraction de données. D'autres cours portaient et l'extraction de données. D'autres cours portaient et l'autilisation de Quicklaw (base de données et sur l'utilisation de Quicklaw (base de données et sur l'utilisation de Quicklaw (base de données et

Avec la mise en œuvre du projet de dotation en ordinateurs de bureau et du Projet d'intégration du système judiciaire dans tout l'appareil judiciaire de l'été 1998, la formation informatique des juges a augmenté considérablement pour que tous les membres de la Cour aient des connaissances suffisantes en informatique.

système de recherche juridiques).

INSTITUT NATIONAL DE LA MAGISTRATURE (I.N.M.): Par l'intermédiaire de son Secrétariat de la formation, la Cour de justice de l'Ontario contribue financièrement aux activités de l'Institut national de la magistrature. L'INM, l'Institut actional de la magistrature. L'INM, dont le siège se trouve à Ottawa, subventionne

### HII. LES PROGRAMMES DE FORMATION EXTERNES

de justice de l'Ontario qui ont des compétences de justice de l'Ontario qui ont des compétences en français peuvent participer à des cours offerts par le Bureau du Commissaire à la magistrature fédérale. Le niveau de compétence des juges détermine la fréquence et la durée des cours. Ceux-ci ont pour but d'assurer que les juges à présider les audiences en français à la Cour de justice de l'Ontario possèdent les compétences. Il y a deux niveaux de cours compétences. Il y a deux niveaux de cours : a) les cours de terminologie à l'intention des juges francophones; b) les cours de terminologie à l'intention des juges francophones; b) les cours de terminologie à l'intention des

2. AUTRES PROGRAMMES DE FORMATION :
On encourage les juges de la Cour de justice de l'Ontario à enrichir leur formation en participant à des programmes offerts par d'autres organismes et associations, notamment les suivants :

- Association canadienne des juges de cours provinciales
- Institut national de la magistrature
- Fédération des professions juridiques : droit pénal (droit substantiel, procédure/preuve) et droit de la famille
- Association internationale des magistrats de la jeunesse et de la famille
- Association du Barreau canadien
- Association des avocats criminalistes
- Advocate's Society Conference
- Association ontarienne de médiation familiale/
   Médiation Canada
- Institut canadien d'administration de la justice
- Association internationale des femmes juges (chapitre canadien)
- Conférence sur les cliniques juridiques de la Cour de la famille de l'Ontario
- Institut canadien d'études juridiques supérieures

THE RESERVE OF THE PARTY OF THE

professionnelles et communautaires pendant les phases de planification et de présentation du programme. Au cours du processus de planification, qui a duré plus de 12 mois, un certain nombre reçu une formation à titre d'animateurs du programme. Ce programme fait largement appel à des vidéos et des publications qui constituent des sources de référence permanentes. Le modèle d'animateur a depuis lors été utilisé dans plusieurs autres programmes de formation de la Cour de justice de l'Ontario.

La Cour a entrepris en mai 1996 son deuxième programme important sur le contexte social, présenté à tous les juges. Ce programme, intitulé du Cour dans une société inclusive, visait à donner de l'information sur l'évolution dela société alin de préparer la Cour à mieux y répondre. Ce programme faisait appel à diverses techniques pédagogiques, notamment des séances en groupes de diverses tailles. Un certain nombre de juges animateurs avaient reçu une formation spéciale pour offrir ce programme qui a été présenté à la suite de consultations communautaires à grande échelle.

En septembre 2000, la Conférence des juges de l'Ontario et l'Association canadienne des juges de cours provinciales se sont réunies à Ottawa pour une conférence commune qui a traité, entre autres, des questions de pauvreté ainsi que des questions touchant la justice autochtone.

Étant donné l'engagement de la Cour dans le domaine de la formation portant sur le contexte social, la Conférence des juges de l'Ontario a créé un comité spécial sur l'égalité pour faire en sorte que les programmes de formation des associations tiennent compte des questions touchant le contexte social et leur accordent une place permanente.

PROGRAMME DE FORMATION EN MILIEU UNIVERSITAIRE. Ce programme, habituellement tenu au printemps pendant 5 jours, dans une université ou un milieu semblable, offre à environ 30 à 35 juges l'occasion d'examiner en profondeur des questions de formation en droit pénal dans un milieu plus universitaire.

SÉMINAIRES PRÉ-RETRAITE: Ce programme de deux jours et demi, conçu à l'intention des juges qui s'approchent de l'âge de la retraite (et de leur conjoint), aborde la question de la transition de la magistrature à la retraite. Il est donné à Toronto lorsque le nombre de participants le justifie.

PROGRAMME DE COMMUNICATION

canadien. Le programme a été présenté de noud'un juge de première instance dans un tribunal qui a adapté le projet pilote au rôle spécifique collaboration avec son associé Frank Borowicz présenté par le professeur Neil Gold en Ce programme a été organisé, élaboré et utilisation éventuelle dans d'autres provinces. dans le contexte d'une évaluation visant son invités à observer le programme et à y participer juges de cours provinciales. Ces derniers ont été juges représentant l'Association canadienne des Cour de justice y ont participé ainsi que deux conférences en mars 2000. Seize juges de la Le Secrétariat a présenté la première de ces l'on disposera des fonds et du temps voulus. judiciaire qui seront donnés dans la mesure où vue des séminaires futurs sur la communication l'Ontario, devait faire office de projet pilote en été offert à 25 juges de la Cour de justice de nication étaient analysées. Ce programme, qui a sur bande vidéo et leurs techniques de commuparticipants étaient enregistrés individuellement connexes. Au cours du programme, les juges verbales et non verbales, l'écoute et les problèmes dingées et des discussions sur les communications judiciaire. Ce programme comprenait des activités programme de formation sur la communication l'Université du Mevada, pour la présentation d'un Gordon Zimmerman et Alayne Casteel, de de l'Ontario a retenu les services des professeurs JUDICIAIRE. En mars 1998, la Cour de justice

PROGRAMMES SUR LE CONTEXTE SOCIAL: La Cour de justice de l'Ontario présente d'importants programmes portant sur le contexte social. Le premier de ces programmes, intitulé Égalité des sexes, a été offert à l'automne 1992. On a eu recours à des ressources externes

veau en mars 2002 à 21 autres juges de la Cour

de justice de l'Ontario.

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perfectionnement des compétences, la gestion des dossiers, les modifications législatives et le contexte social sont incorporés au programme à mesure que le besoin se fait sentir. Chaque programme dure de deux à trois jours et tous les juges qui siègent dans des tribunaux de la famille ont le droit d'y participer et sont encouragés à le faire.

Deux programmes importants en droit pénal sont également présentés chaque année :

- Un séminaire régional de trois jours est organisé annuellement en octobre et novembre dans quatre localités de la province. Ces séminaires traitent généralement de sujets comme la détermination de la peine et le droit de la preuve, bien qu'une variété d'autres sujets puissent également être inclus. Des programmes similaires sont présentés inclus. Des programmes similaires sont présentés dans chacune des quatre localités régionales.
- b) Un séminaire de formation de deux jours et demi est offert au mois de mai, parallèlement à l'assemblée annuelle de la Cour de justice de l'Ontario. Tous les juges qui siègent dans des tribunaux criminels ont le droit d'y participer et sont encouragés à le faire.

#### II. LES PROGRAMMES DU SECRÉTARIAT

Les programmes planifiés et présentés par le Secrétariat de la formation tendent à traiter de sujets qui ne relèvent principalement du droit présentés plus droit de la famille ou qui peuvent être présentés plus d'une fois à différents groupes de juges.

REDACTION DE JUGEMENTS: Il s'agit /d'un programme de deux jours, présenté à un groupe d'une dizaine de juges, selon les fonds disponibles. Dernièrement, deux séminaires ont été présentés annuellement en février au bureau du juge en chef par M. Edward Berry, professeur à l'Université de Victoria.

Au cours de l'exercice 1997-1998, le Secrétariat de la formation a passé un contrat avec le professeur Berry pour la préparation d'un manuel de rédaction de jugements à l'intention des juges de la Cour. Ce document a été préparé et distribué à tous les juges de la Cour. Une deuxième édition a vu le jour.

Dès leur nomination, tous les juges ont un accès égal à un certain nombre de ressources qui ont une incidence directe ou indirecte sur les activités de la Cour de justice de l'Ontario. Ils ont notamment accès à des textes juridiques, un service de recueils de jurisprudence, au Centre de recherche de la Cour de justice de l'Ontario (voir ci-après), à des cours d'informatique et des cours sur Quicklaw (base de données et sique et des cours sur Quicklaw (base de données et système de recherche juridiques informatisés).

#### 7. FORMATION CONTINUE

Les programmes de formation continue offerts aux juges de la Cour de justice de l'Ontario se divisent en deux catégories :

- 1) Les programmes présentés par la Conférence des juges de l'Ontario qui, habituellement, sont d'un intérêt particulier pour les juges dans les domaines du droit pénal et du droit de la famille.
- 2) Les programmes présentés par le Secrétariat de la formation.

### DE LONTARIO CONFÉRENCE DES JUGES

Les programmes offerts par la Conférence des juges de l'Ontario constituent le **programme de base** de la formation offerte par la Cour de justice de l'Ontario. La Conférence des juges de l'Ontario a deux comités de formation (sur le droit pénal et dur le droit de la famille respectivement) composés d'un certain nombre de juges parmi lesquels une personne est habituellement nommée à la présidence de la formation. Ces comités se réunissent selon les besoins et travaillent tout au long de l'année à la planification, à l'élaboration et la présentation de programmes de formation de base.

La Conférence des juges de l'Ontario offre trois programmes de formation en droit de la famille : en janvier (Institut de perfectionnement des juges), en mai (parallèlement à l'assemblée annuelle de la Cour) et en septembre. De manière générale, on y traite les sujets suivants : a) la protection de l'enfance et b) le droit de la famille (garde, droits de visite et pensions alimentaires). D'autres sujets, notamment le alimentaires). D'autres sujets, notamment le

AT INDIVIDUAL

C-7 VANEXE

au bureau du juge en chef deux fois l'année. ressources disponibles. Ce programme est présenté comportement et les actons en salle d'audience et les magistrature, y compris la déontologie judiciaire, le traite de questions pratiques touchant l'accès à la peu de temps après leur nomination. Ce séminaire de formation d'une journée pour les nouveaux juges, La Cour de justice de l'Ontario organise un séminaire

avec ses nouvelles responsabilités. leur cabinet et a ainsi l'occasion de se familiariser d'audience, se rend avec des juges d'expérience dans al sal sa de la constanti de la salle sall audiences. Durant cette période, le nouveau juge ou expérimentés ou à suivre le déroulement de certaines assermentation) à observer des juges principaux plus temps (habituellement plusieurs semaines avant son ence, la ou le juge se voit affecté pendant quelque de cette région. Suivant sa formation et son expérijuge principal régional doit ensuite l'affecter au sein en chef à l'une des sept régions de la province. Le A sa nomination, la ou le juge est affecté par le juge

l'Ontario. (Ces programmes figurent à la rubrique cialisation qui sont offerts par la Cour de justice de formation qui touchent leur(s) domaine(s) de spément les juges à participer à tous les programmes de année qui suit leur nomination, on encourage égaleréférences au droit de la famille. Durant la première cipalement axé sur le droit pénal, avec certaines tique, ce programme intensif d'une semaine est prin-Carling, dans la province de Québec. De nature praenne des juges de cours provinciales (ACJCP) à Lac nouveaux juges, présenté par l'Association canadijuges participent au programme de formation des tion, ou dès que possible par la suite, les nouveaux Au cours de la première année suivant leur nomina-

questions qui les préoccupent ou qui les intéressent. s'entretenir à tout moment avec leurs collègues des ont également l'occasion (comme tous les juges) de Conférence des juges de l'Ontario. Les nouveaux juges un programme de mentorat mis en place par la A sa nomination, chaque juge est invité à participer à

« La formation continue ».

(Conseil canadien de la magistrature) Principes de déontologie judiciaire

La rédaction des motifs

Règles en matière de droit de la famille

ogul ub IsunbM

La conduite d'un procès

de la Cour de justice de l'Ontario

Législation sur le droit de la famille

Code criminel Martin

(Conseil canadien de la magistrature)

Propos sur la conduite des juges

documents, notamment:

de l'Ontario reçoit un certain nombre de textes et À sa nomination, chaque juge de la Cour de justice

### PREMIÈRE ANNEE

I. FORMATION DE

2. Formation continue.

Formation de première année.

: e divise en deux parties :

la Cour de justice de l'Ontario (Division provinciale) Le plan de formation actuellement offert aux juges de

des fonds servant à les financer. formation puisqu'il est responsable de l'affectation

ine et approuve en outre tous les programmes de tion offerts à la Cour de justice de l'Ontario. Il examadministratif et logistique aux programmes de forma-Le Secrétariat de la formation fournit un soutien

de formation. évaluer le processus et les programmes

et les objectifs du Secrétariat; systèmes pour mettre en œuvre le mandat

établir et maintenir des structures et des

et la réflexion

favoriser le désir permanent d'apprendre

perfectionnement des juges; 6. promouvoir la compréhension du

# COUR DE JUSTICE DE L'ONTARIO PLAN DE FORMATION CONTINUE

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Le Secrétariat de la formation adhère au principe de l'importance de la formation pour améliorer l'excellence professionnelle.

Le mandat du Secrétariat de la formation est de favoriser les expériences éducatives qui encouragent les juges à se pencher sur leurs pratiques professionnelles, à accroître leurs connaissances de fond et à s'engager dans une formation autonome permanente. Pour répondre aux besoins d'une magistrature indépendante, le Secrétariat de la formation :

- favorise la formation en tant que moyen de promouvoir l'excellence;
- soutient et encourage les programmes qui entretiennent et développent la sensibilité aux réalités sociales, éthiques et culturelles.

Les objectifs du Secrétariat de la formation sont les suivants:

- I. stimuler le perfectionnement professionnel et personnel continu;
- 2. veiller à ce que la formation réponde aux besoins et intérêts de la magistrature provinciale;
- 3. appuyer et encourager les programmes qui assurent un degré élevé de compétence et de connaissances dans les domaines de la preuve, de la procédure et du droit substantiel;
- mieux faire connaître les structures et les ressources des services communautaires et sociaux susceptibles d'appuyer et le travail des les programmes de formation et le travail des tribunaux;
- 5. favoriser la mise à contribution et la participation actives des juges à toutes les étapes de la conceptualisation, de l'élaboration, de la planification, de la prestation et de l'évaluation des programmes;

Les objectifs du Plan de formation continue de la Cour de justice de l'Ontario sont les suivants :

- Maintenir et développer la compétence professionnelle.
- 2. Maintenir et développer la sensibilisation aux questions sociales.
- 3. Promouvoir le développement personnel.

la Cour. et à y participer pour leur propre bénéfice et celui de choisir des programmes externes qui les intéressent professionnels. On encourage par ailleurs les juges à d'exécution de la loi, à des professeurs et à d'autres appel à des avocats, à des fonctionnaires, à des agents plupart des programmes de formation font largement la planification et la présentation des programmes. La on a souvent recours à des ressources externes pour soient élaborés et présentés par des juges de la Cour, participent les juges de la Cour de justice de l'Ontario Bien qu'un grand nombre des programmes auxquels tionnement des compétences et le contexte social. substantiel, la preuve, la Charte des droits, le perfecannée civile dans des domaines variés, dont le droit d'une dizaine de jours de formation continue par Le plan offre à chaque juge l'occasion de bénéficier

#### SECRÉTARIAT DE LA FORMATION

La coordination de la planification et de la présentation des programmes de formation est assurée par le Secrétariat de la formation. Ce dernier est composé des personnes suivantes : le juge en chef, en sa capacité de président (d'office), quatre juges nommés par la Conférence des juges de l'Ontario. Les avocats recherchistes de la Cour de justice de l'Ontario agissent à titre consultatif. Le Secrétariat se réunit environ quatre fois par an pour examiner les questions portant sur la formation et présente ses conclusions au juge en chef. Le mandat et les objectifs du Secrétariat sont les suivants :

COUR DE JUSTICE DE L'ONTARIO

VUNEXE «C»

#### Classement des dossiers

Une fois que les parties ont été avisées de la décision du CMO, le dossier original de la plainte est rangé dans un classeur verrouillé avec la mention « classé ». Les membres du sous-comité des plaintes retournent leur exemplaire du dossier au greffier pour qu'il soit détruit ou l'informent, par écrit, qu'ils l'ont détruit eux-mêmes. Si l'exemplaire d'un membre ou un avis écrit de sa destruction ne sont pas reçus dans les deux semaines qui suivent la réunion du comité des deux semaines qui suivent la réunion du comité de deux semaines qui suivent la réunion du comité le membre du sous-comité des plaintes pour lui dexamen, le personnel du CMO prend contact avec le membre du sous-comité des plaintes pour lui appeler qu'il doit détruite son exemplaire du dossier, et en aviser le CMO par écrit, ou le renvoyer au CMO, par messager, pour qu'il soit déchiqueté.

final et l'ébauche de lettre au plaignant soumis aux fins d'approbation ne contiennent pas de renseignements susceptibles d'identifier le plaignant ni le juge visé par la plainte. Un double du résumé final est déposé dans chaque dossier de plainte classé ainsi qu'un double de la lettre finale au plaignant indiquant de quelle façon la plainte a été réglée.

#### Avis de décision Notification des parties

Une fois que l'ébauche de lettre au plaignant a été approuvée par le sous-comité des plaintes chargé de l'enquête et par le comité d'examen, une lettre finale est préparée et envoyée au plaignant.

Dans les cas où la plainte est rejetée, le plaignant est avisé de la décision du CMO, motifs à l'appui, comme requis à l'alinéa 51.4de la Loi sur les tribunaux judiciaires.

Le CMO a distribué une formule à tous les juges, demandant à chacun d'indiquer au CMO les circonstances dans lesquelles le juge désire être avisé des plaintes dont il fait l'objet et qui sont rejetées. Le CMO a aussi distribué une formule d'adresse à tous les juges pour qu'ils indiquant au CMO l'adresse à laquelle la correspondance concernant les plaintes doit être envoyée.

Les juges à qui l'on a demandé de répondre à une plainte ou qui, à la connaissance du CMO, sont d'une autre façon au courant de la plainte, sont avisés par téléphone de la décision du CMO. Une lettre confirmant la façon dont la plainte a été réglée est également envoyée au juge conformément à ses instructions.

pour lui faire savoir quels dossiers assignés au souscomité des plainte sont prêts, le cas échéant, à être des plaintes fournit également une copie dûment remplie et lisible des pages 2 et 3 de la formule de réception des plaintes pour chaque dossier prêt à être dossier, outre la plaintes pour chaque dossier prêt à être aux membres du comité d'examen. Aucun renseignement susceptible d'identifier soit le plaignant, soit le juge visé par la plainte n'est inclus dans les documents communiqués aux membres du comité d'examen.

Au moins un membre d'un sous-comité des plaintes est présent lorsque le rapport du sous-comité est présenté à un comité d'examen. Les membres du sous-comité des plaintes peuvent aussi participer par téléconférence au besoin.

#### Comités d'examen

Le président du comité d'examen veille à ce qu'au moins une copie de la page pertinente de la formule de réception des plaintes soit remplie et remise au greffier à la fin de l'audience du comité d'examen.

#### Documents préparés pour les réunions

Tous les documents préparés pour les réunions du Conseil de la magistrature de l'Ontario sont confidentiels et ne peuvent ni être divulgués ni rendus publics.

différents dossiers. Lébauche de résumé et le résumé recommandations du sous-comité des plaintes sur les nagistrature lors de la réunion tenue pour étudier les après discussion entre les membres du Conseil de la modifications peuvent être apportées à ces documents réunion prévue du Conseil de la magistrature. Des examiner au moins une semaine avant la date de la communiquées aux membres pour qu'ils puissent les dossier et l'ébauche de lettre au plaignant sont d'entendre le rapport. L'ébauche de résumé du rapport et aux membres du comité d'examen chargé membres du sous-comité des plaintes qui présente le du dossier et une ébauche de lettre au plaignant aux greffier prépare et fait circuler une ébauche de résumé prêt à présenter un rapport à un comité d'examen, le Lorsqu'un sous-comité des plaintes indique qu'il est

l'aider dans son enquête. Si nécessaire, le greffier détermine auprès du plaignant, à quelle étape en est l'instance judiciaire avant d'ordonner une transcription. Le sous-comité des plaintes peut demander au greffier de laisser le dossier en suspens dans l'attente du règlement de l'affaire devant les tribunaux.

lors d'une audience. été saite sous toutes réserves et ne peut pas être utilisée le juge à cette étape de la procédure est réputée avoir d'une réponse. Toute réponse à la plainte fournie par les détails la concernant, il poursuit en l'absence le juge est au courant de la plainte et dispose de tous et que le sous-comité des plaintes est convaincu que dix jours qui suivent la date du courrier recommandé, recommandé. Si aucune réponse n'est reçue dans les lettre de rappel est envoyée au juge par courrier du sous-comité des plaintes sont prévenus et une réponse n'est pas reçue dans les 30 jours, les membres une réponse pour répondre à la plainte. Si une a 30 jours à compter de la date de la lettre demandant au juge avec la lettre demandant la réponse. Un juge documents pertinents au dossier sont communiqués plainte, la transcription (le cas échéant) et tous les particulière soulevée dans la plainte. Une copie de la de répondre à la question ou à la préoccupation du juge, il enjoint au greffier de demander au juge Si un sous-comité des plaintes requiert une réponse

La transcription ou la bande sonore des preuves et les réponses des juges aux plaintes sont envoyées aux membres du sous-comité des plaintes par messagerie, à moins d'indication contraire de leur part.

Un sous-comité des plaintes peut inviter toute partie ou tout témoin à le rencontrer ou à communiquer avec lui au cours de son enquête.

Le secrétaire du CMO transcrit les lettres de plaintes qui sont écrites à la main et apporte aux membres du sous-comité des plaintes le soutien dont ils ont besoin en matière de secrétariat.

Un sous-comité des plaintes peut demander au greffier d'engager des personnes, notamment des avocats, ou de retenir leurs services, pour l'aider dans la conduite de son enquête (alinéa 51.4(5)).

Avant chaque réunion prévue du CMO, un membre de chaque sous-comité des plaintes est chargé de contacter le greffier adjoint avant une date déterminee

WHEN THE RESERVE

#### Pour faciliter la lecture du texte, le masculin est utilisé pour désigner les deux sexes.

accompagnée des recommandations du greffier concernant le dossier, le cas échéant, est préparée à l'intention des membres du sous-comité des plaintes. Un double de tous les documents est placé dans le dossier des plaintes du bureau et dans le dossier des plaintes de chacun des membres.

Un rapport d'étape sur tous les dossiers de plaintes en cours – dont tout renseignement personnel a été supprimé – est communiqué à chaque membre du CMO lors de chacune de ses réunions ordinaires.

#### Sous-comité des plaintes

Les membres du sous-comité des plaintes s'efforcent de faire le point sur la situation de tous les dossiers ouverts qui leur sont assignés lorsqu'ils reçoivent les rapport d'étape tous les mois, et ils prennent les mesures nécessaires pour pouvoir soumettre le dossier au CMO, aux fins d'examen, le plus vite possible.

Une lettre informant les membres du sous-comité des plaintes qu'un nouveau dossier leur a été assigné leur set envoyée à titre d'information, dans la semaine qui suit l'ouverture et l'assignation du dossier. Les membres du sous-comité des plaintes sont invités à indiquer s'ils veulent que leur copie du dossier leur soit délivrée ou qu'elle soit conservée dans le tiroir verrouillé de leur classeur dans le bureau du CMO. Tout membre qui demande qu'une copie du dossier lui soit délivrée doit en accuser réception. Les membres du sous-comité des plaintes peuvent se présenter au bureau du CMO pour examiner leurs dossiers pendant les heures pour examiner leurs dossiers pendant les heures normales de bureau.

Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur sont assignés et d'en discuter dans le mois qui suit leur réception du dossier. Tous les documents (transcriptions, audiocassettes, dossiers des tribunaux, etc. ) qu'un sous-comité des plaintes des plaintes du sous-comité.

Suivant la nature de la plainte, le sous-comité des plaintes peut demander au greffier d'ordonner une transcription ou audiocassette de la preuve pour

#### QUESTIONS ADMINISTRATIVES

#### Réception des plaintes

mauvaise conduite de la part du juge provincial. réputé être une plainte alléguant qu'il y a cu l'allégation n'a pas répondu, le résumé écrit est jour suivant l'envoi de ce résumé, si l'auteur de juge provincial en cause sera évaluée. Le dixième la plainte sur la base de laquelle la conduite du quant que l'allégation, telle que résumée, devient adresse est connue, accompagné d'un avis indirecommandé à l'auteur de l'allégation, si son résumé écrit de l'allégation est envoyé par courrier transcrit les détails de la plainte par écrit. Ce la magistrature auquel l'allégation a été faite, avec un avocat et avec le membre du Conseil de suivent l'allégation, le greffier, après consultation Conseil de la magistrature dans les 10 jours qui personne ne soumet pas une plainte par écrit au encouragée à déposer la plainte par écrit. Si cette titre, sait une allégation orale à cet effet, elle est (CMO) ou un membre du Conseil agissant à ce plainte le Conseil de la magistrature de l'Ontario Lorsqu'une personne\*, qui veut saisir d'une

si la plainte est du ressort du CMO (tout juge ou protonotaire provincial – à temps plein ou à temps partiel), un dossier de plainte est ouvert et assigné à un sous-comité des plaintes de deux membres aux fins d'examen et d'enquête (les plaintes qui ne sont pas du ressort du CMO sont renvoyées à l'organisme approprié).

le greffier examine chaque lettre de plainte qu'il reçoit et, si la plainte justifie l'ouverture et l'assignation d'un dossier, le greffier détermine s'il est nâtion d'un dossier, le greffier détermine s'il est nâtion d'une bande sonore de l'instance judiciaire, ou les deux, aux fins d'examen par le sous-comité des plaintes et, dans l'affirmative, demande au greffier adjoint de les ordonner.

la plainte est ajoutée à la formule de repérage, un numéro séquentiel est assigné au dossier, une lettre d'accusé de réception est envoyée au plaignant dans la semaine qui suit la réception de sa plainte, la page un de la formule de réception des plaintes est remplie, et une lettre,

- The Population

(Division civile) immédiatement avant le ler septembre 1990. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice désigne le juge qui doit remplacer ce juge.

 Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

3. Les recommandations du sous-comité des plaintes concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, à qui les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

#### (4) I.78 .1sq

#### Plainte contre un protonotaire

Le paragraphe 87 (3) de la Loi sur les tribunaux judiciaires précise que les articles 44 à 51.12 s'appliquent, avec les adaptations nécessaires, aux protonotaires de la même manière qu'aux juges provinciaux

#### **PLAINTE**

Lorsque le Conseil de la magistrature traite une plainte portée contre un protonotaire, les dispositions spéciales suivantes s'appliquent :

Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un protonotaire. Le juge en chef de la Cour de justice de l'Ontario décide quel juge doit être remplacé et le juge en chef de la Cour supérieure de justice de juge en chef de la Cour supérieure de justice désigne le protonotaire qui doit remplacer le juge.

Les plaintes sont renvoyées au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario.

Les recommandations du sous-comité concernant la suspension provisoire sont présentées au juge principal régional compétent de la Cour supérieure de justice, auquel les paragraphes 51.4 (10) et (11) s'appliquent avec les adaptations nécessaires.

Si le juge en chef de la Cour de justice de l'Ontario est suspendu en attendant une décision définitive concernant la plainte portée contre lui, les approbations annuelles qui seraient par ailleurs accordées ou refusées par le juge en chef de la Cour de justice de l'Ontario sont accordées ou refusées par le juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

#### par. 50 (2)(b)

Si le juge en chef adjoint de la Cour de justice de l'Ontario ou le juge principal régional nommé au Conseil de la magistrature fait l'objet d'une plainte, le juge en chef de la Cour de justice de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef adjoint ou du juge principal régional, selon le cas, jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (3)

# Plainte contre un juge de sessites créances la Cour des petites

Le paragraphe 87.1 (1) de la Loi sur les tribunaux judiciaires et certaines dispositions spéciales s'appliquent aux juges provinciaux qui ont été affectés à la Cour provinciale (Division civile) immédiatement avant le le septembre 1990.

#### **PLAINTES**

Lorsque le Conseil de la magistrature traite une plainte portée contre un juge provincial qui a été affecté à la Cour provinciale (Division civile) immédiatement avant le 1er septembre 1990, les dispositions spéciales suivantes s'appliquent:

 Un des membres du Conseil de la magistrature qui est un juge provincial est remplacé par un juge provincial qui a été affecté à la Cour provinciale

simultanée des témoignages, des observations ou des discussions qui ont lieu dans l'autre langue et à une traduction des documents déposés ou des motifs ou rapports rédigés dans l'autre langue.

par. 51.2 (8)

#### laha na agul al annoa aininl eagul eartaina antean no

Si le juge en chef de la Cour de justice de l'Ontario fait l'objet d'une plainte, le juge en chef de l'Ontario nomme un autre juge de la Cour de justice de l'Ontario au Conseil de la magistrature pour qu'il en soit membre au lieu du juge en chef de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise. Le juge en chef adjoint de la Cour de justice de l'Ontario nommé au soin préside les réunions et les audiences du Conseil au lieu du juge en chef et nomme les membres temporaires du Conseil jusqu'à ce qu'une décision temporaires du Conseil jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

#### par. 50 (1)(a) et (b)

Tout renvoi de la plainte qui serait par ailleurs fait au juge en chef de la Cour de justice de l'Ontario (par un sous-comité des plaintes après son enquête, par le Conseil de la magistrature ou un comité d'examen de celui-ci après son examen du rapport du sous-comité des plaintes ou le renvoi de la plainte ou par le fait au juge en chef de la Cour supérieure de justice plutôt qu'au juge en chef de la Cour de justice de l'Ontario, jusqu'à ce qu'une décision définitive concernant la plainte contre le juge en chef de la Cour de justice de l'Ontario, jusqu'à ce qu'une décision définitive concernant la plainte contre le juge en chef de la Cour de justice de l'Ontario, jusqu'à contre le juge en chef de la

#### par. 50 (1)(c)

Si le juge en chef de la Cour de justice de l'Ontario est suspendu en attendant une décision définitive concernant la plainte portée contre lui, les plaintes qui seraient par ailleurs renvoyées au juge en chef de la Cour de justice de l'Ontario sont renvoyées au juge en chef adjoint de la Cour de justice de l'Ontario jusqu'à ce qu'une décision définitive concernant la plainte ait été prise.

par. 50 (2)(a)

Laudience sur une plainte tenue par le Conseil de la magistrature est menée en anglais, mais le plaignant ou le témoin qui parle français ou le témoin qui parle français a droit, sur démande, avant l'audience, à une traduction en français des documents qui sont en anglais et qui seront examinés à l'audience; aux services d'un interprête à l'audience; et à l'interprêtetation simultanée en français l'audience; et à l'interprêtation simultanée en français des parties de l'audience qui se déroulent en anglais.

#### par. 51.2 (3)

Le droit à la traduction et aux services d'un interprète s'applique également aux médiations et à l'examen de la question de l'indemnisation, s'il y a lieu.

#### par. 51.2 (4)

Lorsque le plaignant ou le témoin parle français ou que le juge qui fait l'objet de la plainte parle français, le Conseil de la magistrature peut ordonner que l'audience ou la médiation sur la plainte soit bilingue s'il est d'avis qu'elle peut être menée convenablement de cette manière.

#### par. 51.2 (5)

Un ordre prévu au paragraphe 5) peut s'appliquer à une partie de l'audience ou de la médiation, auquel cas les paragraphes 7) et 8) ci-dessous s'appliquent avec les adaptations nécessaires.

#### par. 51.2 (6)

Au cours d'une audience ou d'une médiation bilingue :

- a) les témoignages oraux et les observations orales peuvent être présentés en français ou en anglais et ils sont consignés dans la langue de présentation;
- l'une ou l'autre langue;
  b) les documents peuvent être déposés dans
- c) dans le cas d'une médiation, les discussions peuvent avoir lieu dans l'une ou l'autre langue;
- d) les motifs d'une décision ou le rapport du médiateur, selon le cas, peuvent être rédigés dans l'une ou l'autre langue.

#### par. 51.2 (7)

Lors d'une audience ou d'une médiation bilingue, si le plaignant ou le juge ne parle qu'une des deux langues, il a droit, sur demande, à l'interprétation

#### DÉLAI DE RÉPONSE

de celui-ci et la conclusion initial du Conseil. compte les besoins spéciaux du juge selon la requête une ordonnance sera rendue pour prendre en pas d'observation et n'accuse pas réception de l'avis, dans son avis au ministre que si celui-ci ne présente répondre. Le Conseil de la magistrature précisera de la demande et de l'indication de son intention de soixante (60) jours suivant son accusé de réception observations sur la demande, il doit le faire dans les cette demande. Si le ministre prévoit de faire des à non uo sibnoqsi sh noitnethi nos sb sittette ou non à Dans ce délai, le ministre avisera le Conseil de la trente (30) jours civils suivant la réception de l'avis. juge, demandera au ministre de répondre dans les d'une demande de prise en compte des besoins d'un Le conseil de la magistrature, lorsqu'il avisera le ministre

### DU CONTENU L'ORDONNANCE

Lorsque le délai indiqué dans l'avis au ministre s'est écoulé ou, le cas échéant, lorsqu'il reçoit des observations du ministre concernant un « préjudice injustifié » éventuel, le Conseil de la magistrature de l'Ontario doit se réunir dès que possible pour décider du contenu de l'ordonnance qu'il va rendre pour prendre en cause les besoins du juge. Dans ses conclusions, le Conseil de la magistrature tiendra compte de la demande et des pièces justificatives présentées par le juge ainsi que des observations, s'il y en a, concernant la question du « préjudice injustifié ».

#### CODIE DE L'ORDONNANCE

On remettra une copie de l'ordonnance au juge et à toute personne touchée par cette ordonnance dans les dix (10) jours civils suivant la date à laquelle l'ordonnance est rendue.

#### CONSIDÉRATIONS SPÉCIALES

#### Plaignants on juges francophones

Les plaintes contre des juges provinciaux peuvent être portées en français ou en anglais.

par. 51.2 (2)

jurisprudence en matière de Droits de la personne pour ce qui est de la définition d'une « invalidité » (ou handicap).

Le Conseil de la magistrature considèrera qu'une condition correspond à une invalidité si elle peut nuire à l'apritude du juge à s'acquitter des obligations essentielles de son poste.

#### NOTIFICATION DU MINISTRE

S'il est convaincu que la condition répond au critère de qualification d'une invalidité et s'il envisage de rendre une ordonnance pour prendre en compte cette invalidité, le Conseil de la magistrature doit fournir dès que possible au Procureur général une copie de la demande de prise en compte de l'invalidité, accompagnée du rapport du sous-comité des besoins spéciaux. Ce rapport doit inclure tous les éléments dont le souscomité a tenu compte pour formuler son opinion sur comité a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

### OBSERVATIONS QUANT À UN PRÉJUDICE INJUSTIFIÉ

Le Conseil de la magistrature invitera le ministre à faire des observations, par écrit, sur le fait qu'une ordonnance que le Conseil envisage de rendre pour la prise en compte des besoins d'un juge ayant une invalidité causera ou non un « préjudice injustifié » au ministère du Procureur général ou à tout autre personne touchée par l'ordonnance en question. Le au ministre, ou à toute autre personne que l'ordonnance obligerait à tenir compte des besoins du juge, de prouver que cette prise en compte des besoins causerait un préjudice injustifié.

Pour déterminer s'il y a ou non préjudice injustifié, le Conseil de la magistrature s'appuiera sur la jurisprudence en matière de Droits de la personne concernant ce sujet, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

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#### SOUS-COMITÉ DES BESOINS SPÉCIAUX

Lorsqu'il reçoit une demande, le Conseil convoque un sous-comité (« sous-comité des besoins spéciaux ») du Conseil comprenant deux membres du Conseil, l'un étant juge et l'autre non. Dès que possible, ce sous-comité rencontre le requérant ainsi que toute personne qui, de l'avis du sous-comité, pourrait être ordonnée de tenir compte des besoins du juge; le sous-comité engage les experts et conseillers dont il pourrait avoir besoin pour formuler une opinion sur les aspects suivants et en faire part au Conseil :

• la durée pendant laquelle les dispositions matérielles ou le service seraient requis pour tenir compte de l'invalidité du juge;

• le coût approximatif des dispositions matérielles ou du service requis pour tenir compte de l'invalidité du juge pendant la durée que ces dispositions ou ce service seraient requis (p. ex., quotidien, hebdomadaire, mensuel, annuel).

#### RAPPORT DU SOUS-COMITÉ DES BESOINS SPÉCIAUX

Le sous-comité des besoins spéciaux doit inclure dans le rapport qu'il présente au Conseil tous les éléments dont il a tenu compte pour formuler son opinion sur les coûts qu'entraînerait la prise en compte des besoins du requérant.

Si, après avoir rencontré le requérant, le sous-comité est d'avis que celui-ci ou celles-ci ne souffre pas d'une invalidité, il doit en informer le conseil dans son rapport.

### LA DEMANDE ET RAPPORT

Le Conseil de la magistrature doit se réunir dès que possible afin d'examiner la demande du requérant et le rapport du sous-comité des besoins spéciaux et déterminer si la demande entre dans le cadre d'une obligation prévue par la loi de tenir compte des besoins spéciaux sans préjudice injustifié.

#### CRITÈRE DE QUALIFICATION EN TANT QU'INVALIDITÉ

Pour déterminer si une ordonnance de prise en compte de l'invalidité d'un juge est justifiée ou non, le Conseil de la magistrature s'appuiera sur la

### BENDNE Y LISSNE DANNE VADIENCE OBDONNVNCE DE BEISE EN COWBLE

Si, après avoir tenu une audience portant sur une plainte, le Conseil de la magistrature conclut que le juge qui faisait l'objet de la plainte n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste, mais qu'il serait en mesure de le faire s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

#### par. 51.6 (13)

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

Les directives et règles de procédures qui suivent ont été établies par le Conseil de la magistrature de l'Ontario relativement à la prise en compte des invalidités.

#### PRÉSENTATION DE LA REQUÊTE PAR ÉCRIT

Un juge qui souhaite que ses besoins soient pris en compte doit présenter une requête écrite contenant les renseignements suivants :

- une description de l'invalidité à prendre en compte;
- oune description des obligations essentielles du poste pour lesquelles la prise en compte des besoins du juge est nécessaire;
- une description des dispositions matérielles ou du service requis pour tenir compte de l'invalidité du itres.
- une lettre signée par un docteur ou un autre professionnel de la santé qualifié (chiropraticien, physiothérapeute, etc.) justifiant la demande du juge:
- la demande et les pièces justificatives ne peuvent pas être utilisées, sans le consentement du requérant, aux fins d'une enquête ou d'une audience autre que l'audience tenue pour examiner la question de la prise en compte des besoins du juge;
- le Conseil de la magistrature de l'Ontario ne peut divulguer ou rendre publics la demande et les pièces justificatives sans le consentement du requérant.

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#### DROIT DE VOTE DU PRÉSIDENT

Le président a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

par. 49 (10)

#### бловим

Huit membres du Conseil de la magistrature, y compris le président, constituent le quorum pour les réunions qui portent sur une demande de prise en compte d'une invalidité. Au moins la moitié des membres présents doivent être des juges et au moins quatre autres membres ne doivent pas être des juges.

par. 49 (13)

#### AIDE D'EXPERTS

Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider.

par. 49 (21)

#### DOSSIERS CONFIDENTIELS

ou d'une audience du Conseil. exclusivement aux fins de la médiation ou d'une réunion renseignements confidentiels et n'ont pas été préparés no sinəmuəob esb əmmos esitri sis ekq ino'n est exigée par la Loi sur les tribunaux judiciaire ou qui dont la divulgation par le Conseil de la magistrature la divulgation de renseignements ou de documents magistrature ou son sous-comité ne peut pas interdire général ou d'une autre personne. Le Conseil de la possession du Conseil de la magistrature, du procureur que les renseignements ou les documents soient en la ne soit pas divulgué ni rendu public. Ceci s'applique Conseil qui a été tenue à huis clos soit confidentiel et à une médiation ou à une réunion ou audience du ordonner que tout renseignement ou document relatif Le Conseil de la magistrature ou un sous-comité peut

#### par. 49 (24), (25) et (26)

Le Conseil de la magistrature établit et rend publiques ses propres règles de procédure, y compris... des directives et les règles de procédure relatives à la prise en compte des invalidités.

par. 51.1 (1)

moins qu'il ne soit tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du ou de la juge dans la mesure qui permette à celui-ci ou celle-ci de s'acquitter de ces obligations.

par. 45 (2)

#### PRÉJUDICE INJUSTIFIÉ

Le paragraphe 45 (2) ne s'applique pas si le Conseil de la magistrature est convaincu que le fait de rendre une ordonnance causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, s'il y en a.

par. 45 (3)

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

Lorsqu'il traite des requêtes prévues au présent article, le Conseil de la magistrature se conforme aux directives et aux règles de procédure qu'il a établies aux termes du paragraphe 51.1 (1).

par. 45 (4)

#### PARTICIPATION

Le Conseil de la magistrature ne doit pas rendre d'ordonnance aux termes du paragraphe 45 (2) qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de présenter des observations.

par. 45 (5)

#### LA COURONNE EST LIEE

L'ordonnance rendue par le Conseil de la magistrature pour tenir compte des besoins d'un juge lie la Couronne.

par. 45 (6)

#### PRÉSIDENCE DES RÉUNIONS

Le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel désigné par le juge en chef, préside les réunions qui portent sur la prise en compte d'une

par. 49 (8)

THE RESIDENCE

# MODIFICATION DE LA VIE PRIVÉE ET LA PROTECTION DE LA VIE PRIVÉE À LA PROTECTION DE LA VIE PRIVÉE SA LA PROTECTION DE LA VIE PRIVÉE DE LA PROTECTION DE LA VIE PRIVÉE DE LA PROTECTION DE LA VIE PRIVÉE DE LA VIE PRIVÉE DE LA VIE PRIVÉE DE LA PROTECTION DE LA VIE PRIVÉE DE LA VIE PRIVÉE DE LA PRIVÉE DE LA VIE PRIVÉE DE LA PRIVÉE DE LA VIE PRIVÉE DE LA PRIVÉE

Larticle 65 de la Loi sur l'accès à l'information et la protection de la vie privée est modifié par adjonction

des paragraphes suivants:

- (4) La présente loi ne s'applique pas à quoi que ce soit qui est compris dans l'évaluation du rendement d'un juge prévue à l'article 51.11 de la Loi sur les tribunaux judiciaires ni aux renseignements recueillis relativement à l'évaluation.
- (5) La présente loi ne s'applique pas à un document du Conseil de la magistrature de l'Ontario, qu'il soit en la possession de celui-ci ou du procureur général, si l'une quelconque des conditions suivantes s'applique :
- Le Conseil de la magistrature ou son sous-comité a ordonné que le document ou les renseignements qui y sont contenus ne soient pas divulgués ni rendus publics.
- 2. Le Conseil de la magistrature a par ailleurs déterminé que le document est confidentiel.
- 3. Le document a été préparé relativement à une réunion ou une audience du Conseil de la magistrature qui s'est tenue à huis clos.

#### PRISE EN COMPTE DES INVALIDITÉS

#### REQUÊTE D'ORDONNANCE

Le juge provincial qui croit ne pas être en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à moins qu'il ne soit tenu compte de ses besoins peut présenter une requête au Conseil de la magistrature pour que soit rendue une ordonnance pour qu'il soit tenu compte de ces besoins.

#### par. 45 (I)

### DE LA MAGISTRATURE OBLIGATION DU CONSEIL

Si le Conseil de la magistrature conclut qu'un ou une juge n'est pas en mesure, en raison d'une invalidité, de s'acquitter des obligations essentielles du poste à

dans le rapport au procureur général ou, si l'audience s'est tenue à huis clos, le juge ne doit pas être identifié dans le rapport, à moins que le Conseil de la magistrature n'ordonne que son nom soit divulgué dans le rapport conformément aux critères établis aux termes du paragraphe 51.6 (8).

#### par. 51.6 (19)

#### INTERDICTION DYDENTIFIER LE JUGE

Si, au cours de l'audience sur une plainte, le Conseil de la magistrature a rendu une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier paragraphe 51.6 (10) et aux critères établis par le paragraphe 51.6 (10) et aux critères établis par le ultérieurement la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport sans son consentement et le Conseil de la magistrature ordonne que les renseignements relatifs à la plainte qui pourraient identifier le juge ne soient à la plainte qui pourraient identifier le juge ne soient jamais rendus publics sans le consentement de celui-ci.

#### par. 51.6 (20)

#### OBDONNANCE DE NON-DIVULGATION

Le Conseil de la magistrature ou un sous-comité des plaintes peut ordonner que tout renseignement ou document relatif à une médiation ou à une réunion ou audience du Conseil qui a été tenue à huis clos soit confidentiel et ne soit pas divulgué ni rendu public, que les renseignements ou les documents soient en la possession du Conseil de la magistrature, du procureur général ou d'une autre personne.

#### par. 49 (24) et (25)

#### **EXCEPTION**

Les dispositions énoncées ci-dessus ne s'appliquent pas aux renseignements ni aux documents dont la divulgation par le Conseil de la magistrature est exigée par la Loi sur les tribunaux judiciaires ou qui n'ont pas été traités comme des documents ou des renseignements confidentiels et n'ont pas été préparés exclusivement aux fins de la médiation ou d'une réunion ou d'une audience du Conseil.

par. 49 (26)

THE RELEASE

de celui-ci, et la plainte est examinée à huis clos. Conseil de la magistrature, ou à un comité d'examen qui fait l'objet de la plainte peuvent être révélées au

par.51.4 (16) et (17)

#### LAUDIENCE À HUIS CLOS POSSIBILITÉ DE TENIR

l'emportent sur ceux de la tenue d'une audience que les avantages du maintien du caractère confidentiel aux critères établis aux termes du paragraphe 31.1 (1), partie de l'audience à huis clos s'il décide, conformément Le Conseil de la magistrature peut tenir la totalité ou une

.supilduq

par. 51.6 (7)

#### **TE NOW DO ÎNCE** INTERDICTION DE DIVULGUER

exceptionnelles, que le nom du juge ne soit pas paragraphe 51.1 (1) qu'il existe des circonstances conformément aux critères établis aux termes du magistrature ordonne, à moins qu'il ne détermine Si l'audience s'est tenue à huis clos, le Conseil de la

divulgué ni rendu public.

(8) 0.15 and

#### LA PUBLICATION ORDONNANCE INTERDISANT

qui fait l'objet de la plainte. de renseignements qui pourraient identifier le juge une décision concernant une plainte, la publication peut rendre une ordonnance interdisant, en attendant au paragraphe 51.1 (1), le Conseil de la magistrature Dans des circonstances exceptionnelles et conformément

par. 51.6 (10)

#### CRITÈRES ÉTABLIS

aux paragraphe 51.1 (1) relativement aux paragraphes établis par le Conseil de la magistrature aux termes On trouvera aux page B-11 ci-dessus les critères

51.6 (7), (8) et (10).

#### RAPPORT AU PROCUREUR GÉNÉRAL

bilitrabit etre doit pas être identifié en'une ordonnance a été rendue en ce sens aux termes identité soit dissimulée au cours de l'audience et nos sup shanand a niomst nu uo tangialq si is

> que la plainte fera l'objet d'une audience publique. ou un comité d'audience de celui-ci, n'ait déterminé , a magistrature,  $\xi$  ( $\xi$ ),  $\xi$  magistrature, d'une plainte donnée, comme le permet le paragraphe (21) et (22), de ne pas confirmer ni nier qu'il a été saisi pour politique, conformément aux paragraphes 51.4 51.4 (17) et (18). Le Conseil de la magistrature a huis clos, conformément aux paragraphes 51.4 (6),

#### SOUS-COMITÉ DES PLAINTES ENQUÊTE À HUIS CLOS PAR UN

du sous-comité liées à l'enquête sur une plainte. des compétences légales ne s'applique pas aux activités des plaintes se déroule à huis clos. La Loi sur l'exercice L'enquête menée sur une plainte par un sous-comité

par. 51.4 (6) et (7)

#### DU COMITÉ D'EXAMEN TRAVAUX À HUIS CLOS

: io-iuloo ob Le Conseil de la magistrature, ou un comité d'examen

- ;91imo2-suos à huis clos, et peut approuver la décision du · examine le rapport du sous-comité des plaintes,
- renvoie la plainte au Conseil. · peut exiger du sous-comité des plaintes qu'il

(71) 4.18 arg

clos, et peut, selon le cas: un comité d'examen de celui-ci, l'examine, à huis comité des plaintes, le Conseil de la magistrature, ou Si la plainte est renvoyée au Conseil par un sous-

- · tenir une audience;
- rejeter la plainte;
- ou non le renvoi de conditions); • renvoyer la plainte au juge en chef (en assortissant
- renvoyer la plainte à un médiateur.

par. 51.4 (18)

#### DU JUGE AU COMITÉ D'EXAMEN RÉVÉLATION DE L'IDENTITE

une audience, l'identité du plaignant et celle du juge magistrature, qu'il lui recommande ou non de tenir Si le sous-comité renvoie la plainte au Conseil de la

#### LISSUE D'UNE AUDIENCE REJET DE LA PLAINTE À

services juridique et indique le montant de l'indemnité. général que le juge soit indemnisé pour ses frais pour Conseil de la magistrature recommande au procureur Si la plainte est rejetée à l'issue d'une audience, le

#### par. 51.7 (5)

#### DIVULGATION DU NOM

public le nom du juge. plainte ou que le Conseil n'ait, par ailleurs, rendu moins qu'il n'y ait eu une audience publique sur la mais le procureur général ne doit pas le divulguer à Conseil de la magistrature fournit le nom du juge, Dans sa recommandation au procureur général, le

par. 51.7 (6)

#### DE LINDEMNILE MONTANT ET VERSEMENT

l'indemnité au juge conformément à la recommandation. pour des services similaires. Le procureur général verse normalement prévu par le gouvernement de l'Ontario services juridiques qui ne dépasse pas le taux maximal Tuoq xuat un nolse ét calculé selon un taux pour rapporter à tout ou partie des frais pour services Le montant de l'indemnité recommandé peut se

par. 51.7 (7) et (8)

#### PROTECTION DE LA VIE PRIVEE CONFIDENTIALITÉ ET

#### RENSEIGNEMENTS AU PUBLIC

d'une plainte donnée. magistrature peut confirmer ou nier qu'il a été saisi A la demande de toute personne, le Conseil de la

par. 51.3 (5)

#### DE LA MAGISTRATURE POLITIQUE DU CONSEIL

ou à un comité d'examen de celui-ci, est examiné à le renvoi de la plainte au Conseil de la magistrature, est tenue à huis clos, et son rapport sur la plainte ou Lenquête du sous-comité des plaintes sur une plainte

> Cour de justice de l'Ontario, ou comme juge provincial. comme juge en chef ou juge en chef adjoint dè la Conseil de la magistrature a maintenu en fonction juge en chet ou un juge en chet adjoint, que le Cour de justice de l'Ontario. Il s'applique aussi à un

(4) 8.13 (4)

CUIDE DE PROCÉDURES DU CMO - INDEMNITÉ

THE RESERVE

#### INDEWNILE

#### CONCERNANT UNE PLAINTE Y LISSUE D'UNE DÉCISION

question de l'indemnisation. le Conseil de la magistrature lui joint l'examen de la l'indemnisation. S'il tient une audience sur la plainte, les services juridiques en rapport avec la question de magistrature, ou un comité d'examen de celui-ci, et l'audience tenue sur une plainte par le Conseil de la la magistrature, ou un comité d'examen de celui-ci, l'examen du rapport d'un médiateur par le Conseil de de la magistrature, ou un comité d'examen de celui-ci, du rapport du sous-comité des plaintes par le Conseil et l'enquête par un sous-comité des plaintes, l'examen suivie en rapport avec la plainte, y compris l'examen edorismab si si memevitisler eègegne si li'up esupibiruj en totalité ou en partie, pour les frais pour services question de savoir si le juge devrait être indemnisé, provincial, le Conseil de la magistrature étudie la Lorsqu'il a traité une plainte portée contre un juge

#### par. 51.7 (1) et (2)

#### EXAMEN PUBLIC OU À HUIS CLOS

plainte; sinon, l'examen se fait à huis clos. au public s'il y a eu une audience publique sur la Lexamen de la question de l'indemnisation est ouvert

par. 51.7 (3)

#### *RECOMMYNDATION*

indique le montant de l'indemnité. au procureur général, laquelle recommandation de la magistrature sait une recommandation en ce sens S'il est d'avis que le juge devrait être indemnisé, le Conseil

par. 51.7 (4)

- 11 - 1 - 1 - 1 - 1 - 1

#### Destitution des fonctions

#### DESTITUTION

Un juge provincial ne peut être destitué que si les conditions suivantes sont réunies :

- a) une plainte a été portée à son sujet devant le Conseil de la magistrature;
- b) le Conseil de la magistrature, à l'issue d'une audience, recommande au procureur général la destitution du juge en raison du fait qu'il est devenu incapable de remplir convenablement ses fonctions ou inhabile pour l'une des raisons suivantes:
- (i) il est inapte, en raison d'une invalidité, à s'acquitter des obligations essentielles de son poste (si une ordonnance pour qu'il soit tenu compte de ses besoins ne remédierait pas à l'inaptitude ou ne pourrait être rendue parce qu'elle causerait un préjudice injustifié à la personne à laquelle il incomberait de tenir compte de ces besoins, ou a été rendue mais n'a pas remédié à l'inaptitude);
- (ii) il a eu une conduite incompatible avec l'exercice convenable de ses fonctions;
- (iii) il n'a pas rempli les fonctions de sa charge.

#### (I) 8.15 .1sq

#### DÉPÔT DE LA RECOMMANDATION

Le procureur général dépose la recommandation du Conseil de la magistrature devant l'Assemblée législative. Si celle-ci ne siège pas, il la dépose dans les quinze jours qui suivent le début de la session suivante.

#### par. 51.8 (2)

#### DÉCRET DE DESTITUTION

Le lieutenant-gouverneur peut prendre un décret en vue de la destitution d'un juge provincial sur demande de l'Assemblée législative.

#### par. 51.8 (3)

APPLICATION

Cet article s'applique aux juges provinciaux qui n'ont pas encore atteint l'âge de la retraite et aux juges provinciaux dont le maintien en fonction après l'âge de la retraite a été approuvé par le juge en chef de la

#### INTERDICTION DYDENTIFIER LE JUGE

Si, au cours de l'audience sur une plainte, le Conseil de la magistrature a rendu une ordonnance interdisant, en attendant une décision concernant une plainte, la publication de renseignements qui pourraient identifier le juge qui fait l'objet de la plainte, aux termes du paragraphe 51.6 (10) et conformément aux critères par le Conseil de la magistrature (se reporter à la rejette ultérieurement la plainte en concluant qu'elle n'était pas fondée, le juge ne doit pas être identifié dans le rapport au procureur général sans son consentement et le conseil de la magistrature ordonne que les reprort au procureur général sans son consentement et le conseil de la magistrature ordonne que les renseignements relatifs à la plainte qui pourraient renseignements relatifs à la plainte qui pourraient identifier le juge ne soient jamais rendus publics sans identifier le juge ne soient jamais rendus publics sans le consentement de celui-ci.

#### par. 51.6 (20)

# Ordonnance pour qu'il soit tenu os des besoins du juge

Si un facteur de la plainte était qu'une invalidité influe aur le fait que le juge n'est pas en mesure de s'acquitter des obligations essentielles du poste, que cette plainte soit rejetée ou qu'elle donne lieu à quelque autre décision à l'exception d'une recommandation au procureur général de destitution du juge, mais que le juge serait en mesure de s'en acquitter s'il était tenu compte de ses besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins, le Conseil de la magistrature ordonne qu'il soit tenu compte des besoins du juge dans la mesure qui permette à celui-ci de s'acquitter de ces obligations.

Le Conseil de la magistrature ne peut rendre cette ordonnance s'il est convaincu que ce fait causerait un préjudice injustifié à la personne à qui il incombe de tenir compte des besoins du juge, compte tenu du coût, des sources extérieures de financement, s'il y en a, et des exigences en matière de santé et de sécurité, a, et des exigences en matière de santé et de sécurité,

Le Conseil de la magistrature ne doit pas rendre une ordonnance pour qu'il soit tenu compte des besoins du juge qui vise une personne sans avoir fait en sorte que celle-ci ait eu l'occasion de participer et de que celle-ci ait eu l'occasion de participer et de

présenter des observations.

Une ordonnance pour qu'il soit tenu compte des besoins d'un juge rendue par le Conseil de la magistrature lie la Couronne.

par. 51.6 (13), (14), (15), (16) et (17)

FIRST TROUBLE SO ACA

t) suspendre le juge sans rémunération mais avec avantages sociaux, pendant une période maximale de trente jours; ou

g) recommander au procureur général la destitution du juge (conformément à l'article

.(8.12

par. 51.6 (11)

#### COMBINVISON DE SYNCLIONS

Le Conseil de la magistrature peut adopter toute combinaison des sanctions susmentionnées, sauf la recommandation au procureur général de destitution du juge, qui ne peut être combinée avec aucune autre sanction.

par. 51.6 (12)

#### Rapport au procureur général

#### RAPPORT

Le Conseil de la magistrature peut présenter au procureur général un rapport sur la plainte, l'enquête, l'audience et la décision (sous réserve d'une ordonnance rendue par le Conseil de la magistrature au sujet du maintien du caractère confidentiel des documents) et le procureur général peut rendre le rapport public s'il et procureur général peut rendre le rapport public s'il est d'avis qu'il y va de l'intérêt public.

par. 51.6 (18)

#### DISSIMULATION DE L'IDENTITÉ

Si le plaignant ou un témoin a demandé que son identité soit dissimulée au cours de l'audience et qu'une ordonnance a été rendue aux termes du paragraphe 31.6 (9), il ne doit pas être identifié dans le rapport au procureur général ou, si l'audience s'est tenue à huis clos, le juge ne doit pas être identifié dans le rapport, à moins que le Conseil de la magistrature n'ordonne que son nom soit divulgué dans le rapport conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.6 (8) (se reporter à la page B-11 ci-dessus).

par. 51.6 (19)

- (e) décision sur toute revendication de privilège de non-divulgation à l'égard des éléments de preuve qu'il est prévu de présenter lors de l'audience;
- (f) toute question relative aux échéances.
- (2) Aucune requête concernant l'une quelconque des mesures de redressement visées dans cet article ne peut être présentée au Comité l'audience sans l'autorisation du Comité d'audience, à moins qu'elle ne porte sur la façon dont l'audience est conduite.
- (3) Le Comité d'audience peut, pour tout motif qu'il estime approprié, réduire la limite de temps prévue dans les présentes règles pour la présentation des requêtes avant une audience.
- 19. Le Conseil fixe, dès que raisonnablement possible, la date et le lieu pour la présentation, par les deux parties, de toute requête soumise aux termes du paragraphe 19 1) et prend une décision à ce sujet dès que raisonnablement possible.

#### APRÈS L'AUDIENCE

#### Prise d'une décision à l'issue d'une audience

#### DECISION

Une fois qu'il a terminé l'audience, le Conseil de la magistrature peut rejeter la plainte, qu'il ait conclut ou non que la plainte n'est pas fondée ou, s'il conclut qu'il y a eu inconduite de la part du juge, il peut, selon le cas :

a) donner un avertissement au juge;

- b) réprimander le juge;
- c) ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- d) ordonner que le juge prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge;
- e) suspendre le juge avec rémunération, pendant une période quelle qu'elle soit;

présentation ou après la présentation des éléments de preuve de celui-ci. L'intimé peut ensuite présenter ses propres éléments de preuve.

- (d) Tous les témoins peuvent être contreinterrogés par l'avocat de la partie adverse puis être interrogés à nouveau au besoin.
- (e) Laudience doit faire l'objet d'un compterendu sténographique et une transcription doit en être fournie sur demande. Si l'avocat de l'intimé en fait la demande, on doit lui fournir la transcription de l'audience gratuitement et dans un délai raisonnable.
- (f) Tant l'avocat chargé de la présentation que l'intimé peuvent présenter et proposer au comité d'audience des constatations, des conclusions, des recommandations ou des ébauches de décisions.
- (g) En conclusion de l'audience, l'avocat chargé de la présentation et l'avocat de l'intimé font, dans l'ordre déterminé par le Conseil, une déclaration faisant la synthèse des éléments de preuve et de toute question de droit soulevée par ces éléments.

#### DÉCISIONS PRÉALABLES À L'AUDIENCE

- 18. Au plus tard 10 jours avant la date fixée pour le début de l'audience, l'une ou l'autre des parties peut présenter au comité d'audience une requête concernant une question de procédure ou autre qui doit faire l'objet d'une décision avant l'audience.
- (1) Sans limiter la portée générale de ce qui précède, ces requêtes peuvent porter sur les points suivants :
- (a) objection quant à la compétence du Conseil d'instruire la plainte;
- (b) résolution de toute question relative à des craintes raisonnables de partialité personnelle ou institutionnelle de la part du Comité;
- (c) objection quant à la suffisance de divulgation; de la part l'avocat chargé de la présentation;
- (d) décision sur une question de droit quelconque afin d'accélèrer le déroulement de l'audience;

#### CONFÉRENCE PRÉPARATOIRE

préparatoire devant un juge qui est membre du préparatoire devant un juge qui est membre du Conseil mais ne fait pas partie du Comité qui entendra les accusations portées contre l'intimé, afin de limiter les points en litige et de promouvoir un règlement à l'amiable.

#### LAUDIENCE

- 15. Pour plus de certitude, l'intimé a le droit de se faire représenter par un avocat ou d'agir en son propre nom pour toute audience tenue conformément à ce code.
- 16. Si l'avocat chargé de la présentation ou l'intimé en fait la demande à un moment quelconque, le Comité peut exiger que quiconque, par assignation, fasse un témoignage sous serment ou une déclaration lors de l'audience et présente, à titre d'éléments de preuve, tout document ou objet, que le Comité précise, qui est en rapport avec la question faisant l'objet de l'audience et admissible à l'audience.
- (1) Toute assignation ordonnée aux termes du présent article doit être présentée sous la forme prescrite dans le paragraphe 12(2) de la Loi sur l'exercice des compétences légales.
- de membres du Conseil qui n'ont pas participé au sous-comité des plaintes chargé d'enquêter sur la plainte ni au comité d'examen qui a examiné sur la plainte ni au comité des plaintes. le report du sous-comité des plaintes.
- (1) Les directives suivantes s'appliquent à la conduite de l'audience à moins que le Comité, sur motion présentée par une autre partie ou par consentement, n'en décide autrement.
- (a) Tous les témoignages doivent être faits sous serment, affirmation solennelle ou promesse.
- (b) Lavocat chargé de la présentation doit ouvrir l'audience par une déclaration préliminaire et poursuivre en présentant les éléments de preuve à l'appui des accusations contenues dans l'avis d'audience, par interrogation directe des témoins.
- (c) Lavocat représentant l'intimé peut faire une déclaration préliminaire immédiatement après la déclaration préliminaire de l'avocat chargé de la

Une preuve de la signification doit être conservée dans les dossiers du Conseil.

#### RÉPONSE

- 9. L'intimé peut signifier à l'avocat chargé de la présentation et déposer auprès du Conseil une réplique aux accusations rapportées dans l'avis d'audience.
- (1) La réponse peut contenir tous les détails des faits sur lesquels l'intimé s'appuie.
- (2) Le répondant peut en tout temps, avant ou durant l'audience, signifier à l'avocat chargé de la présentation et auprès du Conseil une réplique modifiée.
- (3) Le fait que l'intimé ne dépose aucune réplique ne doit pas être considéré comme son admission d'une accusation quelconque portée contre lui à son encontre.

#### DIVULGATION

- 10. Avant l'audience, l'avocat chargé de la présentation doit faire parvenir à l'intimé ou à son avocat les nom et adresse de tous les témoins que l'on sait au courant des faits pertinents ainsi qu'une copie de toutes les déclarations faites par le témoin et des résumés des entrevues avec le témoin avant l'audience.
- 11. Lavocat chargé de la présentation doit aussi fournir, avant l'audience, tous les documents non privilégiés en sa possession se rapportant aux accusations mentionnées dans l'avis d'audience.
- 12. Le Comité d'audience peut interdire à l'avocat chargé de la présentation d'appeler à l'audience un témoin dont le nom et l'adresse, s'ils sont connus, ou les déclarations ou le résumé des entrevues, n'auraient pas été communiqués à l'intimé avant l'audience.
- 13. La partie V s'applique, avec les adaptations nécessaires, à tout renseignement porté à l'attention de l'avocat chargé de la présentation après qu'il ait communiqué l'information conformément à cette partie.

la présentation de l'exposé des faits à l'encontre de l'intimé.

- 3. L'avocat-conseil engagé par le Conseil agit indépendamment de celui-ci.
- 4. Le mandat de l'avocat-conseil engagé dans ce contexte n'est pas d'essayer d'obtenir une décision particulière à l'encontre d'un intimé, mais de veiller à ce que la plainte portée contre le juge soit évaluée de façon rationnelle et objective afin de parvenir à une décision juste.
- Pour plus de certitude, l'avocat chargé de la présentation ne doit conseiller le Conseil sur aucune des questions qui sont soumises à celui-ci. Toutes les communications entre l'avocat chargé de la présentation et le Conseil doivent, dans le cas de communications directes, se faire en présence de l'avocat représentant l'intimé ou, dans le cas de communications écrites, avec copie aux intimés.

#### VAIS D'AUDIENCE

- 6. L'audience doit être précédée d'un avis d'audience conformément à cette section.
- 7. Lavocat chargé de la présentation doit rédiger un avis d'audience.
- (1) Lavis d'audience doit contenir les éléments suivants:
- (a) détails des accusations portées à l'encontre de l'intimé;
- (b) référence à la loi en vertu de laquelle l'audience sera tenue;
- (c) déclaration indiquant la date, l'heure et le lieu de l'audience;
- (d) déclaration indiquant l'objet de l'audience;
- (e) déclaration précisant que si l'intimé n'est pas présent à l'audience, le Comité peut tenir l'audience en son absence et l'intimé n'aura droit à aucun autre avis de l'instance.
- Lavocat chargé de la présentation doit prendre les dispositions nécessaires pour que l'avis d'audience soit signifié en personne t à l'intimé ou, si le comité chargé de l'audience adopte une motion à cet effet, par un autre moyen qu'une signification à personne.

ne font pas partie du comité d'audience de la plainte. composé de membres du Conseil de la magistrature qui nouvelle plainte. Le sous-comité des plaintes doit être pour que le dossier soit traité comme s'il s'agit d'une

#### **BOOK FES AUDIENCES** CODE DE BROCEDNBE

#### **PREAMBULE**

tribunaux judiciaires. vertu de la disposition 51.1 (1) 6 de la Loi sur les judiciaires et sont élaborées et rendues publiques en en vertu de l'article 51.6 de la Loi sur les tribunaux audiences du Conseil de la magistrature organisées Ces règles de procédure s'appliquent à toutes les

mérites de la cause. donne lieu à une décision juste et basée sur les libéralement afin d'assurer que chaque audience Ces règles de procédure doivent être interprétées

#### **DÉFINITIONS**

judiciaires. qui leur est donnée dans la Loi sur les tribunaux les termes utilisés dans ce code ont la signification 1. A moins que le contexte n'en indique autrement,

- (1) Dans ce code,
- que modifiée. judiciaires, L.R.O. 1990, chap. C. 43, telle (a) La « Loi » est la Loi sur les tribunaux
- 49 (16) de la Loi. l'audience, créé en vertu du paragraphe (b) Le « comité » est le comité chargé de
- vertu de l'alinéa 51.4 (18)(a) de la Loi. il est ordonné de tenir une audience en (c) « L'intimé » est le juge à l'encontre de qui
- des faits à l'encontre d'un intimé. préparation et de la présentation de l'exposé est l'avocat chargé par le Conseil de la (d) « Lavocat chargé de la présentation »

#### PRÉSENTATION DES PLAINTES

engage un avocat-conseil pour la préparation et une plainte portée contre un juge, le Conseil 2. Lorsqu'il ordonne de tenir une audience concernant

> l'audience s'est tenue à huis clos: de révéler publiquement le nom d'un juge même si les critères suivants avant de décider s'il est approprié Les membres du Conseil de la magistrature examinent

- a) le juge en fait la demande;
- b) il y va de l'intérêt public.

la plainte.

#### EN VLLENDVAL ONE DECISION LA PUBLICATION DU NOM D'UN JUGE, ORDONNANCE INTERDISANT

CONCERNANT UNE PLAINTE - CRITÈRES

qui pourraient identifier le juge qui fait l'objet de concernant une plainte, la publication de renseignements ordonnance interdisant, en attendant une décision 51.1(1), le Conseil de la magistrature peut rendre une aux critères établis aux termes du paragraphe Dans des circonstances exceptionnelles et conformément

#### par. 51.6 (10)

COIDE DE PROCÉDURES DU CMO - CODE DE PROCÉDURE POUR LES AUDIENCES

en attendant une décision concernant une plainte: pourraient identifier le juge qui fait l'objet de la plainte, interdisant, la publication de renseignements qui de la magistrature peut rendre une ordonnance les critères suivants pour déterminer quand le Conseil Les membres du Conseil de la magistrature examinent

- pourraient être révélées; a) des questions intéressant la sécurité publique
- b) des questions financières ou personnelles de nature
- de la publicité des audiences. ou dans l'intérêt public l'emporte sur le principe révéler dans l'intérêt de la personne concernée aux circonstances, l'avantage qu'il y a à ne pas les révélées à l'audience, qui sont telles qu'eu égard intime ou d'autres questions qui pourraient être

#### NOUVELLE PLAINTE

comité des plaintes du Conseil de la magistrature résumé des détails de la plainte et l'envoie à un sousfaisant l'objet de l'audience, le registrateur rédige un juge provincial qui n'est pas couverte par la plainte constituer une allégation de mauvaise conduite d'un d'un membre du Conseil de la magistrature, pourrait divulgués qui, s'ils étaient portés à la connaissance Si, au cours de l'audience, de nouveaux faits sont

OUT DOOR SE

Si la plainte porte sur une allégation d'inconduite d'ordre sexuel ou de harcèlement sexuel, le Conseil de la magistrature interdit, à la demande d'un plaignant ou d'un autre témoin qui déclare avoir été victime d'une conduite semblable par le juge, la publication de renseignements qui pourraient identifier le plaignant ou le témoin, selon le cas.

#### (9) 3.18 and

### Y HNIS CTOS - CKILÈKES VADIENCE BABLIÓNE ON

Le Conseil de la magistrature a établi les critères suivants aux termes du paragraphe 51.1 (1) pour l'aider à déterminer si les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience publique. Si le Conseil de la magistrature détermine qu'il existe des circonstances exceptionnelles, conformément aux critères suivants, il peut tenir la toualité ou une partie de l'audience à huis clos.

#### (7) 8.18 .rsq

Les membres du Conseil de la magistrature se fondent sur les critères suivants pour déterminer quelles circonstances exceptionnelles peuvent justifier la décision de préserver le maintien du caractère confidentiel et de tenir la totalité ou une partie de l'audience à huis clos:

- a) des questions intéressant la sécurité publique pourraient être révélées;
- des questions financières ou personnelles de nature intime ou d'autres questions qui pourraient être révélées à l'audience, qui sont telles qu'eu égard aux circonstances, l'avantage qu'il y a à ne pas les révéler dans l'intérêt de la personne concernée ou dans l'intérêt public l'emporte sur le principe de la publicité des audiences.

### D'AUDIENCE À HUIS CLOS – CRITÈRES DIVULEATION DU NOM DU JUGE EN CAS

Si l'audience s'est tenue à huis clos, le Conseil de la magistrature ordonne, à moins qu'il ne détermine conformément aux critères établis aux termes du paragraphe 51.1 (1) qu'il existe des circonstances exceptionnelles, que le nom du juge ne soit pas divulgué ni rendu public.

angue in restau punite.

#### VIDIENCES

#### COMMUNICATION PAR LES MEMBRES

Les membres du Conseil de la magistrature qui participent à l'audience ne doivent pas communiquer ni directement ni indirectement avec une partie, un avocat, un mandataire ou une autre personne, pour ce qui est de l'objet de l'audience, sauf si toutes les parties et leurs avocats ou mandataires ont été avisée et ont l'occasion de participer. Cette interdiction n'a pas pour effet d'empêcher le Conseil de la magistrature de ont svocat pour se faire aider, auquel cas la nature des conseils donnés par l'avocat est communiquée nature des conseils donnés par l'avocat est communiquée aux parties pour leur permettre de présenter des observations quant au droit applicable.

#### par. 51.6 (4) et (5)

#### PARTIES À L'AUDIENCE

Le Conseil de la magistrature détermine quelles sont les parties à l'audience.

#### par. 51.6 (6)

### TOTALITÉ OU PARTIE DE TOTALITÉ DE PARTIE DE

Les audiences du Conseil de la magistrature sur une plainte et ses réunions portant sur l'examen de la question de l'indemnisation sont ouvertes au public, à moins que le comité d'audience ne déterminé, conformément aux critères établis par le Conseil de la magistrature aux termes du paragraphe 51.1 (1), qu'il existe des circonstances exceptionnelles et que les avantages du maintien du caractère confidentiel l'emportent sur ceux de la tenue d'une audience l'emportent sur ceux de la tenue d'une audience publique, auquel cas il peut tenir la totalité ou une partie de l'audience à huis clos.

#### par. 49 (11) et 51.6 (7)

La Loi sur l'exercice des compétences légales (L.E.C. L.) s'applique à une audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9[1] de la L.E.C.L.).

par. 51.6 (2)

#### COMPOSITION

Les règles suivantes s'appliquent à un comité d'audience établi en vue de la tenue d'une audience aux termes de l'article 51.6 (décision du Conseil de la magistrature) ou de l'article 51.7 (indemnisation) :

- la moitié des membres du comité d'audience, y compris le président, doivent être des juges et la moitié ne doivent pas être des juges;
- 2) un membre, au moins, ne doit être ni juge ni
- le juge en chef de l'Ontario, ou un autre juge de la Cour d'appel de l'Ontario désigné par le juge en chef, préside le comité d'audience;
- 4) sous réserve des dispositions 1, 2 et 3 ci-dessus, le Conseil de la magistrature peut fixer le nombre des membres du comité d'audience et en déterminer la composition;
- 5) tous les membres du comité d'audience constituent le quorum (par. 49[17]);
- le président du comité d'audience a le droit de voier et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau;
- 7) les membres du sous-comité des plaintes qui a enquêté sur une plainte ne doivent pas participer à une audience sur celle-ci;
- 8) les membres du comité d'examen qui a reçu et examiné la recommandation d'un sous-comité des plaintes à l'égard d'une plainte ne doivent pas participer à une audience sur celle-ci (par. +9[20]).

#### par. 49 (17), (18), (19) et (20)

#### POUVOIRS

Un comité d'audience formé par le Conseil de la magistrature aux termes des articles 51.6 ou 51.7 a, à cette fin, les mêmes pouvoirs que le Conseil de la magistrature.

par. 49 (16)

(3) l'intérêt public requiert la tenue d'une audience sur la plainte.

#### Avis de décision

#### COMMUNICATION DE LA DÉCISION

Le Conseil de la magistrature, ou un comité d'examen de celui-ci, communique sa décision au plaignant et au juge qui fait l'objet de la plainte, en exposant brièvement les motifs dans le cas d'un rejet.

par. 51.4 (20)

#### PROCÉDURES ADMINISTRATIVES

On trouvera à la page 25-26 du présent document des renseignements détaillés sur les procédures administratives que doit suivre le Conseil de la magistrature au moment d'aviser les parties de sa décision.

#### COMITÉ D'AUDIENCE

#### LÉGISLATION APPLICABLE

Toutes les audiences tenues par le Conseil de la magistrature doivent se dérouler conformément à l'article 51.6 de la Loi sur les tribunaux judiciaires.

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

#### par. 51.1 (2)

La Loi sur l'exercice des compétences légales (L.E.C.L.) s'applique à toute audience tenue par le Conseil de la magistrature, sous réserve des dispositions relatives aux décisions rendues sans audience (art. 4 de la L.E.C.L.) ou aux audiences publiques (par. 9 [1]de la n'ont pas à être approuvées par le Comité des règles n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

#### par. 51.1 (3) et 51.6 (2)

Les règles que le Conseil de la magistrature a établies aux termes du paragraphe 51.1 (1) s'appliquent à une audience tenue par celui-ci.

par. 51.6 (3)

#### C) RENVOI DE LA PLAINTE AU JUGE EN CHEF

un rapport sur la décision concernant la plainte. au comité d'examen et au sous-comité des plaintes chef de la Cour de justice de l'Ontario présente par écrit conformément au paragraphe 51.4 (15). Le juge en plainte pourrait bénéficier et si ce dernier y consent, complémentaire dont le juge qui fait l'objet de la conviennent qu'il existe une démarche ou une formation justice de l'Ontario si la majorité de ses membres le renvoi de la plainte au juge en chef de la Cour de comité d'examen recommande d'assortir de conditions les circonstances ayant donné lieu à la plainte. Le le juge que sa conduite n'a pas été appropriée dans comité d'examen, un moyen convenable d'informer représente, de l'avis de la majorité des membres du que la plainte pourrait être fondée et que la décision justifie pas une autre décision, qu'il y a lieu de croire membres estiment que le comportement reproché ne de la Cour de justice de l'Ontario si la majorité de ses le comité d'examen renvoie la plainte au juge en chef

#### D) RENVOI DE LA PLAINTE À UN MÉDIATEUR

riovuoq ub instroqmi inplibre important du pouvoir dans l'une quelconque des circonstances suivantes: plaintes sont exclues de la procédure de médiation le Conseil de la magistrature établisse ces critères, les de la Loi sur les tribunaux judiciaires. Jusqu'à ce que médiation, comme le prévoit le paragraphe 51.5(3) d'exclusion des plaintes qui ne se prêtent pas à la que la conduite reprochée ne répond pas aux critères majorité des membres du comité d'examen estiment la plainte peut être renvoyée à un médiateur si la la magistrature établit une procédure de médiation, Loi sur les tribunaux judiciaires. Lorsque le Conseil de l'objet de plaintes, conformément à l'article 51.5 de la de médiation pour les plaignants et les juges qui font si le Conseil de la magistrature a établi une procédure Le comité d'examen renvoie la plainte à un médiateur

si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable;

(2) la plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination d'ordre sexuel ou sur une allégation de discrimination

entre le plaignant et le juge, ou il existe un écart

d'ordre sexuel ou sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motif illicite prévu dans une disposition du Code des droits de la personne;

La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, liés à l'examen du rapport du sous-comité des plaintes ou à l'examen d'une plainte qui lui a été renvoyée par le sous-comité.

#### (91) 4.18 ard

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

#### par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'examen des plaintes qui lui sont renvoyées par un sous-comité des plaintes, à sa propre demande ou non, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, se conforme aux directives et aux règles de procédure établies à cette fin par le Conseil.

### par. 51.4 (22)

## A) TENUE D'UNE AUDIENCE A) TENUE D'UNE AUDIENCE

Le comité d'examen ordonne la tenue d'une audience si la majorité de ses membres estiment qu'il y a eu une allégation d'inconduite judiciaire qui repose sur des faits et qui, si l'enquêteur la considère digne de foi, pourrait amener à conclure à l'inconduite judiciaire. Si le comité d'examen recommande de tenir une audience, il peut recommander ou non que celle-ci se tienne à huis clos et, le cas échéant, les critères établis par le Conseil de la magistrature devront être respectés par le Conseil de la magistrature devront être respectés

(voir la page 18 ci-après).

#### B) REJET DE LA PLAINTE

Le comité d'examen rejette la plainte si la majorité de ses membres estiment que l'allégation d'inconduite judiciaire ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure, ou si le comité d'examen est d'avis que la plainte n'est pas justifiée. En général, un comité d'examen ne rejettera pas une plainte sur la base qu'elle est n'est pas justifiée à moins d'être convaincu que les allégations contre le juge provincial ne s'appuient sur aucun fait réel.

THE RESERVE AS A R

### Renvoi d'une plainte à memera de samen

#### QUAND PROCÉDER AU RENVOI

Lorsque le sous-comité des plaintes présente son rapport au comité d'examen, le comité peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte afin qu'il l'examine lui-même. Le comité d'examen exige que le sous-comité des plaintes lui renvoie la plainte si les membres du sous-comité ne peuvent s'entendre sur la décision à recommander concernant la plainte ou si la décision à recommandée à cet égard est inacceptable pour la majorité des membres du comité d'examen.

par. 51.4 (13), (14) et (17)

### POUVOIR D'UN COMITÉ D'EXAMEN POUVOIR D'UN COMITÉ D'EXAMEN

Si le sous-comité des plaintes renvoie une plainte au comité d'examen ou si le comité exige que le sous-comité lui renvoie une plainte pour qu'il l'examine lui-même, l'identité du plaignant et celle du juge qui fait l'objet de la plainte peuvent être révélées aux membres du comité d'examen qui examinent la plainte, à huis clos, et qui peuvent, selon le cas:

- tenir une audience;
- rejeter la plainte;
- renvoyer la plainte au juge en chef de la Cour de justice de l'Ontario en assortissant ou non le renvoi de conditions);
- renvoyer la plainte à un médiateur.

par. 51.4 (16) et (18)

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

par. 51.1 (2)

# Examen du rapport du sous-comité des plaintes

#### EXYMEN Y HOIS CLOS

Le comité d'examen examine le rapport du souscomité des plaintes, à huis clos, et peut approuver la décision du sous-comité ou exiger du sous-comité qu'il lui renvoie la plainte, auquel cas le comité examine la plainte, à huis clos.

par. 51.4 (17)

#### PROCÉDURE D'EXAMEN

Le comité d'examen examine la lettre de plainte, les passages pertinents de la transcription (s'il y a lieu), la réponse du juge (s'il y a lieu), etc., dont tous les renseignements identificatoires doivent avoir été supprimés, ainsi que le rapport du sous-comité des plaintes, jusqu'à ce que ses membres soient convaincus que le sous-comité a repéré et examiné les sujets de préoccupation dans son enquête portant sur la plainte et dans la ou les recommandations qu'il a formulées au comité d'examen relativement à la décision concernant la plainte.

Le comité d'examen peut différer sa décision sur la recommandation du sous-comité des plaintes et ajourner ses travaux au besoin afin d'examiner sa décision ou ordonner au sous-comité de poursuivre son enquête et de lui présenter un nouveau rapport. Si les membres du comité d'examen ne sont pas

Si les membres du comité d'examen ne sont pas satisfaits du rapport du sous-comité des plaintes, ils peuvent renvoyer la plainte de nouveau au sous-comité pour que celui-ci poursuive son enquête, donner toute autre orientation ou faire au sous-comité toute autre demande qu'ils jugent appropriée.

Lorsqu'il est nécessaire de procéder à un vote pour déterminer s'il convient d'accepter ou non la recommandation d'un sous-comité des plaintes, et qu'il y a partage des voix, le président vote de nouveau et il a voix prépondérante.

B-8 VANEXE

#### RÔLE DU COMITÉ D'EXAMEN

Le comité d'examen est formé pour examiner les décisions des sous-comités des plaintes concernant les plaintes et prendre une décision concernant les dossiers de plainte actifs à toutes les réunions ordinaires du Conseil de la magistrature, si les exigences de la loi pertinente relatives au quorum sont respectées.

#### DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

#### par. 51.1 (2)

La Loi sur l'exercice des compétences légales ne s'applique pas aux travaux du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, liées à l'examen du rapport d'un sous-comité des plaintes ou à l'examen d'une plainte qui lui est renvoyée par un sous-comité des plaintes.

#### par. 51.4 (19)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

#### par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1(1) relativement à l'examen du rapport présenté par un sous-comité des plaintes à un comité d'examen ou d'une plaintes, et le Conseil de la magistrature, ou un comité d'examen de celui-ci, se conforme aux directives et aux règles de procédure établies à cette fin par le Conseil.

par. 51.4 (77)

#### INFORMATION À INCLURE

Lorsqu'il renvoie la plainte à un comité d'examen du Conseil, le sous-comité des plaintes doit transmettre au comité d'examen tous les documents, transcriptions, déclarations et autres éléments de preuve dont il a tenu compte au cours de l'enquête sur la plainte, y compris, le cas échéant, la réaction à la plainte du juge concerné. Le comité d'examen tient compte de ces renseignements pour parvenir à une conclusion ces renseignements pour parvenir à une conclusion aur la décision appropriée concernant la plainte.

#### COMITÉ D'EXAMEN

#### OBJET

Le Conseil de la magistrature peut former un comité d'examen dans l'un des buts suivants :

- examiner le rapport d'un sous-comité des plaintes;
- examiner une plainte qui lui a été renvoyée par un sous-comité des plaintes;
- examiner le rapport d'un médiateur
- examiner une plainte qui lui est renvoyée à l'issue d'une médiation;
- examiner la question de l'indemnisation;

et, à cette fin, le comité d'examen a les mêmes pouvoirs que le Conseil de la magistrature.

#### par. 49 (14)

#### COMPOSITION

Le comité d'examen se compose de deux juges provinciaux (autres que le juge en chef), d'un avocat et d'un membre du Conseil de la magistrature qui n'est ni juge ni avocat. Aucun des deux membres ayant siègé au sous-comité des plaintes qui a mené l'enquête sur la plainte et formulé la recommandation au comité d'examen ne peut en faire partie. Un des juges, désigné par le Conseil, préside le comité et quatre membres constituent le quorum. Le président du comité d'examen a le droit de voter et peut, en cas de partage des voix, avoir voix prépondérante en votant de nouveau.

par. 49 (15), (18) et (19)

### LA TENUE D'UNE AUDIENCE LA TENUE D'UNE AUDIENCE

Si le sous-comité des plaintes recommande de tenir une audience, il peut recommander ou non que celle-ci se tienne à huis clos et, le cas échéant, on se conforme aux critères établis par le Conseil de la magistrature (voir la page 11 ci-après).

#### E) INDEMNILE

Le rapport du sous-comité des plaintes au comité d'examen peut aussi traiter de la question de l'indemnisation du juge pour les frais pour services juridiques qu'il a engagés, le cas échéant, relativement à l'enquête si le sous-comité estime que la plainte doit ce sens dans son rapport au Conseil de la magistrature. Le Conseil peut alors recommander au procureur général que le juge soit indemnisé pour les frais pour services juridiques, conformément à l'arricle 51.7 de services juridiques, conformément à l'arricle 51.7 de services juridiques, conformément à l'arricle 51.7 de

#### par. 51.7 (1)

La décision de recommander ou non que le juge soit indemnisé pour les frais pour services juridiques sera prise au cas par cas.

#### RENVOI D'UNE PLAINTE AU CONSEIL

magistrature, ou à un comité d'examen de celui-ci. en cause peuvent être révélées au Conseil de la une audience, l'identité du plaignant et celle du juge magistrature, qu'il lui recommande ou non de tenir le sous-comité renvoie la plainte au Conseil de la du sous-comité ne s'entendent pas sur la décision. Si recommandée par le sous-comité ou si les membres qu'il lui renvoie la plainte s'il n'approuve pas la décision de celui-ci, peut exiger du sous-comité des plaintes Conseil de la magistrature, ou un comité d'examen plaintes conviennent de cette recommandation, et le nécessaire que les deux membres du sous-comité des non de tenir une audience sur la plainte. Il n'est pas Conseil de la magistrature, qu'il lui recommande ou plaintes peut également renvoyer la plainte a,u Comme il a été signalé ci-dessus, le sous-comité des

par.51.4 (16) et (17)

#### C) RENVOI DE LA PLAINTE À UN MÉDIATEUR

Le sous-comité des plaintes renvoie la plainte à un médiateur si le Conseil de la magistrature a établi une procédure de médiation pour les plaignants et pour les juges qui font l'objet de plaintes, conformément à l'article 51.5 de la Loi sur les tribunaux judiciaires. Lorsque le Conseil de la magistrature établit une procédure de médiation, la plainte peut être renvoyée la conduite reprochée ne répond pas aux critères d'exclusion des plaintes qui ne se prêtent pas à la d'exclusion des plaintes qui ne se prêtent pas à la médiation, comme le prévoit la Loi sur les tribunaux judiciaires. Jusqu'à ce que le Conseil de la magistrature établisse ces critères, les plaintes sont exclues du établisse ces critères, les plaintes sont exclues du processus de médiation dans les circonstances suivantes:

(1) il existe un déséquilibre important du pouvoir entre le plaignant et le juge, ou il existe un écart si important entre le compte rendu du plaignant et celui du juge relativement à l'objet de la plainte que la médiation serait impraticable;

(2) la plainte porte sur une allégation d'inconduite d'ordre sexuel ou sur une allégation de discrimination ou de harcèlement en raison d'un motifilicite prévu dans une disposition du Code des droits de la personne;

(3) l'intérêt public requiert la tenue d'une audience sur la plainte.

par. 51.4 (13) et 51.5

### LENIB ONE VODIENCE D) BECOMMANDATION DE

Le sous-comité des plaintes renvoie la plainte au Conseil de la magistrature, ou à un comité d'examen de celui-ci, et il recommande la tenue d'une audience sur la plainte si elle porte sur une allégation d'inconduite judiciaire qui, de l'avis du sous-comité des plaintes, repose sur des faits et qui, si l'enquêteur la considère digne de foi, pourrait amener à conclure qu'il y a eu inconduite judiciaire.

(d1) to (f1) 4.1c.1kg

sans identifier le plaignant ni le juge qui fait l'objet de la plainte. Aucun renseignement qui pourrait identifier le plaignant ou le juge faisant l'objet de la plainte ne doit figurer dans les documents transmis aux membres du comité d'examen.

#### par. 51.4 (16)

#### DECISION UNANIME

Le sous-comité des plaintes ne peut rejeter la plainte ou la renvoyer au juge en chef de la Cour de justice de l'Ontario ou à un médiateur que si les deux membres du sous-comité en conviennent, sinon la plainte doit être renvoyée au Conseil de la magistrature.

#### par. 51.4 (14)

# PAR LE SOUS-COMITÉ DES PLAINTES

#### A) REJET DE LA PLAINTE

Lorsqu'il l'a examinée, le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure. Lorsqu'il a terminé son enquête, le sous-comité peut aussi recommander le rejet d'une plainte s'il en arrive à la conclusion que la plainte n'est pas fondée.

### par. 51.4 (3) et (13)

### B) BENAOI DE LA PLAINTE AU JUGE EN CHEF

Le sous-comité des plaintes renvoie la plainte au juge en chef de la Cour de justice de l'Ontario si les circonstances entourant l'inconduite reprochée ne justifient pas une autre décision, qu'il y a lieu de croire que la plainte pourrait être fondée et que la décision constitue, de l'avis du sous-comité des plaintes, un moyen convenable d'informer le juge que sa conduite n'a pas été appropriée dans les circonstances ayant donné lieu à la plainte. Le sous-comité des plaintes assortira de conditions la décision de renvoyer la plainte as juge en chef de la Cour de justice de l'Ontario si, à son avis, il existe une démarche ou une formation complémentaire dont le juge faisant l'objet de la plainte pourrait bénéficier et si ce dernier y consent.

### par. 51.4 (13) et (15)

## DIRECTIVES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

#### par. 51.1 (2)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

#### par. 51.1 (3)

Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du paragraphe 51.1 (1) relativement à la prise d'une décision concernant une plainte et à la communication au Conseil de la magistrature, ou à un comité d'examen de celui-ci, de la décision du sous-comité des plaintes.

#### par. 51.4 (21)

### PROCÉDURE À SUIVRE

Un membre de chaque sous-comité des plaintes est chargé de communiquer avec le registrateur adjoint avant une date précise précédant chaque réunion ordinaire du Conseil de la magistrature pour l'informer, s'il y a lieu, des dossiers attribués au sous-comité sur lesquels ce dernier est prêt à présenter un rapport à un aussi une copie lisible et remplie en bonne et due forme des pages appropriées de la formule d'admission de la plainte pour chaque dossier sur lequel ils sont prêts à présenter un rapport et indiquent les autres prièces du dossier qui, outre la plainte, doivent être copiées et transmises aux membres du comité d'examen pour qu'il les examine.

Au moins un membre du sous-comité des plaintes est présent lorsque le rapport du sous-comité est

présenté au comité d'examen.

### AUCUN RENSEIGNEMENT IDENTIFICATOIRE

Le sous-comité des plaintes présente au Conseil de la magistrature un rapport sur sa décision concernant toute plainte qui est rejetée ou renvoyée au juge en coute plainte qui est rejetée de l'Ontario ou à un médiateur, chef de la Cour de justice de l'Ontario ou à un médiateur,

### RECOMMANDATIONS PROVISOIRES INFORMATION CONCERNANT LES

il fait l'objet et de la recommandation du sous-comité. prendre sa décision et d'aviser le juge de la plainte dont plainte dans le but d'aider le juge principal régional à principal régional et au juge qui fait l'objet de la omité doivent être fournis en même temps au juge sur lesquels repose la recommandation du sousjusqu'au règlement de la plainte, les détails des facteurs suspension ou la réalfectation temporaire du juge Lorsque le sous-comité des plaintes recommande la

se poursuit. dation de suspension temporaire ou de réallectation suivant la date de l'envoi de la lettre, la recommanréponse du juge n'est parvenue dans les 10 jours en l'informant de son droit de réponse. Si aucune proposée et des motifs justifiant cette proposition, et mandé, de la suspension ou de la réaffectation sonne ou, si ce n'est pas possible, par courrier recompar écrit en avisant le juge, par signification à perà celui-ci la possibilité de faire valoir son point de vue temporaire ou la réaffectation du juge, il peut donner d'examen propose de recommander la suspension Lorsque le sous-comité des plaintes ou le comité

# Rapport au comité d'examen

# LORSQUE L'ENQUÊTE EST TERMINÉE

plaintes, selon le cas: Lorsqu'il a terminé son enquête, le sous-comité des

- rejette la plainte;
- justice de l'Ontario; • renvoie la plainte au juge en chef de la Cour de
- i(1) 1.15 and paragraphe 31.1 (1); aux critères établis par le Conseil de la magistrature renvoie la plainte à un médiateur, conformément
- audience. qu'il lui recommande ou non de tenir une · renvoie la plainte au Conseil de la magistrature,

par. 51.4 (13)

### RECOMMANDATIONS PROVISOIRES ET CERTAINS AUTRES JUGES -PLAINTE CONTRE LE JUGE EN CHEF

la recommandation du sous-comité des plaintes. justice, qui peut suspendre ou réaffecter le juge selon présentée au juge en chef de la Cour supérieure de rémunération, ou de réaffectation temporaire est toute recommandation de suspension, avec régional qui est membre du Conseil de la magistrature, de la Cour de justice de l'Ontario ou le juge principal Cour de justice de l'Ontario, un juge en chef adjoint Si la plainte est portée contre le juge en chef de la

#### par. 51.4 (12)

### OU DE RÉAFFECTATION PROVISOIRES DE SUSPENSION CRITÈRES POUR LES RECOMMANDATIONS

aux termes du paragraphe 51.1 (1), c'est-à-dire: procédure établis par le Conseil de la magistrature des plaintes se conforme aux directives et règles de un juge jusqu'au règlement de la plainte, le sous-comité compétent de suspendre ou de réaffecter temporairement Lorsqu'il recommande au juge principal régional

#### par. 51.4 (21)

- travaillent au même palais de justice; le plaignant et le juge, et le plaignant et le juge • la plainte découle de relations de travail entre
- l'administration de la justice; sièger est susceptible de jeter le discrédit sur • le sait de permettre au juge de continuer à
- par un organisme chargé de l'exécution de la motifs raisonnables de saire mener une enquête · la plainte est assez grave pour qu'il y ait des
- impossible de tenir compte raisonnablement. il est impossible de remédier ou dont il est ses capacités mentales ou physiques à laquelle plaintes que le juge a subi une diminution de • il est évident de l'avis du sous-comité des

apport et leurs conseils au cours de l'enquête menée dans le cadre du traitement de la plainte.

#### par. 51.4 (5)

#### PLAINTES MULTIPLES

Le registrateur remettra toute nouvelle plainte de nature similaire, formée contre un juge à l'égard duquel un ou des dossiers de plainte est (sont) déjà ouvert(s), au même sous-comité des plaintes qui mêne une enquête sur le ou les dossiers en instance. Une telle mesure garantit que les membres du sous-comité des plaintes qui mènent une enquête sur une plainte portée contre un juge soient au courant de l'existence d'une plainte similaire, qu'elle soit du même plaignant ou d'un autre, formulée contre le même juge.

Lorsqu'un juge fait l'objet de trois plaintes portées par trois plaignants différents sur une période de trois ans, le registrateur porte ce fait à l'attention du Conseil de la magistrature, ou d'un comité d'examen de celui-ci, afin qu'il détermine si les plaintes multiples celui-ci, afin qu'il détermine si les plaintes multiples doivent ou non faire l'objet de conseils au juge de la part du Conseil, du juge en chef adjoint ou du juge principal régional membre du Conseil de la magistrature.

# RECOMMANDATION PROVISOIRE DE SUSPENSION OU DE RÉAFFECTATION

Juge en chef. al l'administration ni à la surveillance de la part du la recommandation du sous-comité n'est pas assujetti qu'a le juge principal régional d'accepter ou de rejeter mandation du sous-comité. Le pouvoir discrétionnaire ou réaffecter temporairement le juge selon la recomrégional. Le juge principal régional peut suspendre recommandation est présentée à un autre juge principal membre du Conseil de la magistrature, auquel cas la juge est affecté, sauf si le juge principal régional est principal régional nommé pour la région à laquelle le été prise. La recommandation est présentée au juge qu'une décision définitive concernant la plainte ait l'affectation de celui-ci à un autre endroit, jusqu'à ce rémunération, du juge qui fait l'objet de la plainte ou juge principal régional compétent la suspension, avec Le sous-comité des plaintes peut recommander au

par. 51.4 (8), (9), (10) et (11)

### RÉPONSE À UNE PLAINTE

audience. droit et elle ne pourra pas être utilisée au cours d'une est réputée avoir été donnée sous réserve de tout fait l'objet de la plainte à cette étape de la procédure Toute réponse à une plainte formulée par le juge qui sous-comité procédera en l'absence de réponse. de la plainte et de tous les détails s'y rapportant, le sous-comité est convaincu que le juge est au courant suivant la date de la lettre recommandée et que le ne reçoit toujours pas de réponse dans les dix jours acheminée au juge par courrier recommandé. Si l'on plaintes en sont informés et une lettre de rappel est du délai prescrit, les membres du sous-comité des plainte. Si aucune réponse n'est reçue avant l'expiration la lettre sollicitant sa réponse pour répondre à la Le juge dispose de trente jours à partir de la date de transmises au juge avec la lettre sollicitant sa réponse. toutes les pièces pertinentes versées au dossier sont copie de la plainte, la transcription (s'il y a lieu) et questions précises soulevées dans la plainte. Une de demander au juge de réagir sur une ou plusieurs réponse du juge, il donne au registrateur l'instruction Si le sous-comité des plaintes souhaite obtenir une

#### **GÉNÉRALITÉS**

La transcription de témoignages et la réponse du juge à la plainte sont transmises par messager aux membres du sous-comité des plaintes, à moins que le membres ne donnent des instructions contraires.

Le sous-comité des plaintes peut inviter l'une ou l'autre témoin, s'il y en a, à le rencontrer ou communiquer avec eux à l'étape de l'enquête. Le secrétaire du Conseil de magistrature transcrit les lettres de plainte qui sont manuscrites et offre aux membres du sous-comité des plaintes les services de secrétariat et de soutien nécessaires.

#### CONSEILS ET ASSISTANCE

Le sous-comité des plaintes peut donner au registrateur l'instruction d'engager des personnes, y compris des avocats, ou de retenir leurs services pour l'aider dans la conduite de son enquête sur une plainte. Le souscomité des plaintes peut aussi consulter les membres du sous-comité des procédures pour obtenir leur

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### PLAINTES ANTÉRIEURES

Le sous-comité des plaintes limite son enquête à la plainte portée devant lui. La question de l'importance à accorder, s'il y a lieu, aux plaintes antérieures portées contre un juge qui fait l'objet d'une autre plainte devant le Conseil de la magistrature peut être examinée par les membres du sous-comité des plaintes si le registrateur, avec l'aide d'un avocat (si le registrateur plaintes antérieures sont très semblables en ce sens plaintes antérieures sont très semblables en ce sens qu'il y a preuve de faits similaires et qu'elles l'aidetraient à déterminer si la plainte examinée pourrait ou non être fondée.

# REGISTRATEUR DOIT OBTEVIR

Les membres du sous-comité des plaintes s'efforcent d'examiner les dossiers qui leur ont été attribués, d'en discuter et de déterminer dans un délai d'un mois après la réception d'un dossier si une transcription de témoignages ou une réponse à la plainte est nécessaire. Si le sous-comité des plaintes lui en fait la demande, le registrateur doit obtenir pour celui-ci toutes les pièces (transcriptions, bandes audio, dossiers du tribunal, etc.) que le sous-comité souhaite examiner en rapport avec une plainte; les membres du sous-comité avec une plainte; les membres du sous-comité n'obtiennent pas eux-mêmes ces pièces.

#### TRANSCRIPTIONS, ETC.

Compte tenu de la nature de la plainte, le souscomité peut donner au registrateur l'instruction de demander la transcription de témoignages ou leur enregistrement sur bande magnétique dans le cadre de son enquête. Au besoin, on communique avec le plaignant pour déterminer l'étape à laquelle en est la poursuite en justice avant de demander une transcription. Le sous-comité des plaintes peut donner au registrateur l'instruction de laisser le dossier en suspens jusqu'à ce que l'affaire portée devant les tribunaux ait été réglée. Si le sous-comité réclame une transcription, les sténographes judiciaires ont comme consigne de ne pas présenter la transcription au juge qui fait l'objet de la plainte pour révision.

décision de renvoyer la plainte au juge en chef, le sous-comité des plaintes se conforme aux directives et aux règles de procédure établies par le Conseil de la magistrature aux termes du paragraphe 51.5 (1). Le Conseil de la magistrature a établi les directives et les règles de procédure suivantes aux termes du parales règles de procédure suivantes plainte par un sous-comité des plaintes.

### par. 51.4 (21)

#### ACCORD SUR LA FAÇON DE PROCÉDER

Les membres du sous-comité des plaintes examinent le dossier et les pièces (le cas échéant) et en discutent ensemble avant de déterminer la teneur de la plainte et de décider des mesures d'enquête à prendre (demander une transcription, solliciter une réponse, etc.). Aucun membre du sous-comité ne doit prendre plainte lui ayant été attribuée sans d'abord examiner la plainte lui ayant été attribuée sans d'abord examiner la plainte lui ayant été attribuée sans d'abord examiner plainte lui ayant été attribuée sans d'abord examiner painte lui ayant été attribuée sans d'abord examiner la plainte avec l'autre membre du sous-comité des plaintes et convenir de la démarche à adopter. Si les membres du sous-comité des plaintes ne s'entendent pas sur une mesure d'enquête, ils soumettent la question à un comité d'examen pour obtenir ses conseils et son opinion.

### REJET D'UNE PLAINTE

Le sous-comité des plaintes rejette la plainte sans autre forme d'enquête si, à son avis, elle ne relève pas de la compétence du Conseil de la magistrature, qu'elle est frivole ou qu'elle constitue un abus de procédure.

#### par. 51.4 (3)

### TENUE D'UNE ENQUÊTE

Si la plainte n'est pas rejetée, le sous-comité des plaintes mène les enquêtes qu'il estime appropriées. Le Conseil de la magistrature peut engager des personnes, y compris des avocats, pour l'aider dans la conduite de son enquête. L'enquête est menée à huis clos. La Loi sur l'exercice des compétences légales ne s'applique pas aux activités du sous-comité des plaintes liées à l'enquête sur une plainte.

par. 51.4 (4), (5), (6) et (7)

# GUIDE DE PROCÉDURES DU CMO

Veuillez noter: A moins d'indication contraire, tous les renvois figurant dans le présent document se rapportent à la Loi sur les tribunaux judiciaires, L.R.O. 1990, dans sa forme modifiée.

#### PROCEDURES ADMINISTRATIVES

On trouvera aux pages 25 à 27 du présent document des renseignements détaillés sur les procédures administratives que doivent suivre les membres du sous-comité des plaintes et ceux du comité d'examen.

#### RAPPORTS D'AVANCEMENT

Les membres du sous-comité des plaintes reçoivent régulièrement par écrit un rapport faisant le point sur la situation des dossiers actifs qui leur ont été attribués. Ces rapports d'avancement sont envoyés par la poste à chaque membre du sous-comité au début de chaque mois. Les membres s'efforcent d'examiner chaque mois, sur réception du rapport d'avancement, les dossiers qui leur ont été attribués et de prendre les mesures niècessaires pour soumettre ces dossiers à l'examen nécessaires pour soumettre ces dossiers à l'examen du Conseil de la magistrature dès que possible.

# Enquête

### LIGNES DIRECTRICES ET RÈGLES DE PROCÉDURE

La Loi sur les règlements ne s'applique pas aux règles, directives ou critères établis par le Conseil de la magistrature.

#### par. 51.1 (2)

Les règles du Conseil de la magistrature n'ont pas à être approuvées par le Comité des règles d'exercice des compétences légales aux termes des articles 28, 29 et 33 de la Loi sur l'exercice des compétences légales.

### par. 51.1 (3)

Lorsqu'il mène des enquêtes, recommande provisoirement la suspension ou l'affectation à un autre endroit, prend une décision concernant une plainte à l'issue de son enquête ou assortit de conditions la

### PLAINTES

#### **CENERALITÉS**

Toute personne peut porter devant le Conseil de la magistrature une plainte selon laquelle il y aurait eu inconduite de la part d'un juge provincial. Si une allégation d'inconduite est présentée à un membre du Conseil de la magistrature, elle est traitée comme une plainte portée devant celui-ci. Si une allégation d'inconduite contre un juge provincial est présentée à un autre juge ou au procureur général, cet autre juge ou le procureur général, selon le cas, fournit à l'auteur de l'allégation des renseignements sur le rôle du Conseil de la magistrature et sur la façon de porter plainte, et le renvoie au Conseil de la magistrature.

### par. 51.3 (1), (2) et (3)

Une fois qu'une plainte a été portée devant lui, le Conseil de la magistrature est chargé de la conduite de l'affaire

#### par. 51.3 (4)

# SOUS-COMITE DES PLAINTES

### COMPOSITION

La plainte reçue par le Conseil de la magistrature est examinée par un sous-comité des plaintes du Conseil, qui se compose d'un juge autre que le juge en chef et d'un membre du Conseil qui n'est ni juge ni avocat (si la plainte est portée contre un protonotaire, les procédures s'appliquent à lui de la même manière qu'à un juge). Les membres admissibles du Conseil de la magistrature siègent au sous-comité des plaintes par rotation.

### par. 51.4 (1) et (2)

#### COIDE DE PROCÉDURES DU CMO – INDEX

THE RELEASE

52-8 15 52-8	Dépôt d'une plainte \ Ouverture du dossier de plainte  Sous-comité des plaintes  Compte-rendu  Avis de décision – Signification aux parties  Clôture de dossier
	QUESTIONS ADMINISTRATIVES
E-23 15 22-8	CONSIDÉRATIONS SPÉCIALES Plaignants ou juges francophones Plainte contre un juge en chef ou certains autres juges Plainte contre un juge de la Cour des petites créances Plainte contre un protonotaire
B-22	Copie de l'ordonnance
	Délai de réponse Réunion pour décider du contenu l'ordonnance
B-55	Observations quant à un préjudice injustifié
B-22	
CC d	
	Critère de qualification en tant qu'invalidité
I7-8	Examen initial de la demande et rapport

I 7-8	Rapport du sous-comité des besoins spéciaux	
I Z-8	Sous-comité des besoins spéciaux	
I 7-8	Présentation de la requête par écrit	
I7-8	Directives et règles de procédure	
I Z-8	Ordonnance de prise en compte rendue à l'issue d'une audience.	
B-70	Dossiers confidentiels	
D7-8	Aide d'experts	
B-70	Quorum murou)	
D7-9	Droit de vote du président.	
B-70	Présidence des réunions	
0.5-8	La Couronne est liée	
B-70	Participation	
B-20	Directives et règles de procédure	
D-50	Préjudice injustifié	
-19 et B-20	Obligation du Conseil de la magistratureB.	
6I-8	Requête d'ordonnance	
	E EN COMPTE DES INVALDITÉS	KISE
B-13	l'information et la protection de la vie privée	
	Modifications apportées à la Loi sur l'accès à	
6I-8	Ехсериюп	
6I-8	Ordonnance de non-divalgation	
6I-8	Interdiction d'identifier le juge	
	Rapport au procureur général	
	Critères établis	
8I-I	Ordonnance interdisant la publication	
8I-8	Interdiction de divulguer le nom du juge	
	Possibilité de tenir l'audience à huis clos	
	Révélation de l'identité du juge au comité d'examen	
	Travaux à huis clos du comité d'examen	
	Enquête à huis clos par un sous-comité des plaintes	
	Politique du Conseil de la magistrature	
	mand an augustication	

CONFIDENTIALITÉ ET PROTECTION DE LA VIE PRIVÉE

COIDE DE PROCÉDURES DU CMO - INDEX

# APRÈS LAUDIENCE

# Prise d'une décision à l'issue de l'audience

71-8	àtinmahni'l ah tnamazzay ta tnetnoM
LI-8	mon ub noisegluvid
71-8	Rejet de la plainte à l'issue d'une audience
71-8	Recommandation
	Examen public ou à huis clos
	INDEWNILĘ
/ T-9 19 91-9	noissilqqA
	Décret de destitution
	Dépôt de la recommandation
	Destitution
	<i>C</i>
	Destitution des fonctions
91-10	Ordonnance Destitution des fonctions
ə8nf un	Ordonnance pour qu'il soit tenu compte des besoins d'
91-8	Interdiction d'identifier le juge  Ordonnance pour qu'il soit tenu compte des besoins d'  Ordonnance
21-8 <b>91.</b> 90	Ordonnance pour qu'il soit tenu compte des besoins d'
21-8 <b>91.</b> 90	Dissimulation de l'identité Interdiction d'identifier le juge Ordonnance pour qu'il soit tenu compte des besoins d' Sait soit tenu compte des besoins d' Ordonnance
81-13B-13	Rapport an procureur général  Rapport  Dissimulation de l'identité  Interdiction d'identifier le juge  Ordonnance pour qu'il soit tenu compte des besoins d'identité  Ordonnance pour qu'il soit tenu compte des besoins d'identifier le juge
91-8B-15	Papport Dissimulation de l'identité Interdiction d'identifier le juge Ordonnance pour qu'il soit tenu compte des besoins d' Ordonnance

# Avis de décision

ZI-8 19 + I-8	Décisions préalables à l'audience
₽1-I	Laudience
₽1-8	Conférence préparatorie
E1-8	noi)gation
	Réponse
	Avis d'audience
	Présentation des plaintes
71-8B-12	Délinitions
	Préamble
	CODE DE PROCÉDURE POUR LES AUDIENCES
71-8B-17	Nouvelle plainte
	une plainte – Critères
	d'un juge, en attendant une décision concernant
	Ordonnance interdisant, la publication du nom
B-11 et B-12	d'audience à huis clos – Critères
	Divulgation du mon de ges en cas
II-8	Audience publique ou à huis clos – Critères
I I -8	Totalité ou partie de l'audience à huis clos
I I-8	Parties à l'audience
	Communication par les membres
	VODIENCES
B-1(	riiovuoq
B-I(	Composition
B-1(	Législation applicable
	COMITÉ D'AUDIENCE
B-1(	Procédures administratives
	Communication de la décision

COIDE DE PROCÉDURES DU CMO - INDEX

INDEX VANEXE B

# CUIDE DE PROCÉDURES DU CMO – INDEX

THE RESIDENCE

# Rapport au comité d'examens est est

01-8 19 e-10	d) renvoi de la plainte à un médiateur	
6-8	c) renvoi de la plainte au juge en chef	
6-8	d sl sp. jez (d	
6-a	a) tenue audienee somis (a	
	Directives concernant la décision	
6-8 19 8-8	Directives et règles de procédure	
	mouvoir d'un comité d'examen à l'égard du renvoi	
	Quand procéder au renvoi	
	lenvoi d'une plainte à un comité d'examen	К
B-8	тэтгосе́дите d`examen	
8-8	Examen à huis clos	
	sətninlq eəb ətimos-euoe ub tropport du sons-comité des plaintes	$\mathbf{E}$
Z-8	Directives et règles de procédure	
Z-8B-7	Rôle du comité d'examen	
	Composition	
<i>Υ-</i> Β		
	ITÉ D'EXAMEN	WOO
/-g	Information à inclure	
	Renvoi d'une plainte au Conseil	
	e) recommandation de verser une indemnité	
	Recommandation relative à la tenue d'une audience	
	d) recommandation de tenir une audience	
	c) renvoi de la plainte à un médiateur	
	b) renvoi de la plainte au juge en chei	
	a) rejet de la plainte	
	Critères pour les décisions rendues par un sous-comi	
	Décision unanime	
	Aucun renseignement identificatoireA	
	Procédure à suivre	
	aux rapports au comité d'examen	
	Directives et règles de procédure relatives	
†-∃	Lorsque l'enquête est est terminée	

INDEX VANEXE B

# Information concernant les recommandations provisoires......B-4 de suspension ou de réaffectation Critères pour les recommandations provisoires Recommandations provisoires ......B-4 Plainte contre le juge en chef et certains autres juges -Recommandation provisoire de suspension ou de réaffectation ......B-3 Conseils et assistance......B-3 Réponse à une plainte.......B-3 Transcriptions, etc. Information que le registrateur doit obtenir...........B-2 Plaintes antérieures.......B-2 Accord sur la façon de procéder...........B-2 aux enquêtes sur une plainte......B-1 et B-2 Lignes directrices et règles de procédure relatives Enquête Rapports d'étape......B-1 Procédures administratives .....B-1 Composition......B-1 SOUS-COMITES DES PLAINTES **PLAINTE**

# GUIDE DE PROCÉDURES DU CMO

H . I S I K N Y

**INDEX** 

GNIDE DE PROCÉDURES DU CMO

VUNEXE «B»

THE R. P. LEWIS CO., LANSING

Dans tous les cas, la décision du Conseil une lettre vous informant des raisons du rejet. juge, votre plainte sera rejetée et vous recevrez décide qu'il n'y a pas eu d'inconduite par le Si, après un examen sérieux, le Conseil

vous sera communiquée.

Renseignements supplémentaires

frais le 1-800-695-1118. de téléimprimeur peuvent composer sans sans frais le 1-800-806-5186. Les utilisateurs politaine de Toronto, vous pouvez téléphoner de Toronto. À l'extérieur de la région métrole (416) 327-5672 dans la région métropolitaine d'assistance supplémentaires, veuillez composer si vous avez besoin de renseignements ou

la poste ou par télécopieur à l'adresse suivante: Les plaintes par écrit doivent être envoyées par

C.P. 914 Conseil de la magistrature de l'Ontario

31, rue Adelaide est

Succursale Adelaide

Toronto (Ontario) MSC 2K3

Télécopieur (416) 327-2339

# Rappel

Toute plainte portant sur la conduite d'un options en matière d'appel. votre avocat pour déterminer quelles sont vos décision d'un juge en cour, veuillez consulter protonotaires. Si vous n'êtes pas satisfait de la sur la conduite de juges provinciaux ou de enquête seulement sur les plaintes portant Le Conseil de la magistrature de l'Ontario

à Ottawa. être faite au Conseil canadien de la magistrature juge nommé par le gouvernement fédéral doit Conseil pourra déterminer quelles sanctions disune audience publique pourrait être tenue et le décide qu'un juge est l'auteur d'une inconduite,

ciplinaires seraient appropriées. Si le Conseil de la magistrature de l'Ontario

allant d'un avertissement donné au juge jusqu'à

sérieuses. Elle peut entraîner des sanctions

votre plainte avant de rendre sa décision.

membre du public, révisera soigneusement

comprend deux juges, un avocat et un autre nombre de membres. Ce comité d'examen, qui comité d'examen composé d'un plus grand

votre plainte et fera une recommandation à un

Un sous-comité, composé d'un juge et d'un

membre du public, mènera une enquête sur

répondra par écrit pour en accuser réception.

l'Ontario reçoit votre lettre de plainte, il vous

Lorsque le Conseil de la magistrature de

à croire qu'il y a eu inconduite de la part

salle d'audience, veuillez fournir tous les

renseignements pertinents qui vous portent

incident qui s'est produit à l'extérieur de la

eu inconduite. Si votre plainte porte sur un

possibles qui vous portent à croire qu'il y a

et le lieu de l'audience et autant de détails que

signée. La plainte doit inclure la date, l'heure vous devez formuler votre plainte par lettre

contre un juge provincial ou un protonotaire, Si vous avez une plainte d'inconduite à présenter

d'appel peut modifier la décision d'un juge.

dans la décision d'un juge ni de modifier sa

décision dans un dossier. Seule une cour

Comment les plaintes sont elles instruites?

L'inconduite judiciaire est une affaire des plus

la recommandation de sa destitution.

Décision du Conseil

an inge

Dépôt d'une plainte

#### 7 - V VANEXE

# **VAEZ-AONS NME PLAINTE?** LE CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

formées contre les juges provinciaux ou les protonotaires. Linformation contenue dans cette brochure porte sur les plaintes d'inconduite

peut être ordonné. initiale peut être modifiée ou un nouveau procès convient qu'une erreur a été commise, la décision le nom de cour d'appel. Si la cour d'appel Cette cour supérieure est mieux connue sous la décision du juge devant une cour supérieure. révision de la décision ou interjeter appel de mauvaise décision, elle peut demander une parties au litige pense qu'un juge a rendu la décevoir l'une ou l'autre des parties. Si l'une des

# Conduite professionnelle des juges

trature de l'Ontario. plainte officielle auprès du Conseil de la magiscial ou protonotaire, vous pouvez déposer une vous plaindre de l'inconduite d'un juge provinsabilité de rendre les décisions. Si vous voulez et dans la conduite des juges qui ont la responélevées dans la façon dont justice est rendue En Ontario, nous nous attendons à des normes

ou le manquement au devoir. sexe, un conflit d'intérêt avec l'une des parties une personne en raison de sa race ou de son d'un juge peuvent inclure un parti pris contre événement rare. Des exemples d'inconduite Heureusement, l'inconduite d'un juge est un

# Rôle du Conseil de la magistrature de l'Ontario

public. Le Conseil n'a pas le pouvoir d'intervenir composé de juges, d'avocats et de membres du contre des juges provinciaux. Le Conseil est d'enquêter sur les plaintes d'inconduite formées plusieurs fonctions mais son rôle principal est judiciaires. Le Conseil de la magistrature remplit de l'Ontario en vertu de la Loi sur les tribunaux un organisme qui a été établi par la province Le Conseil de la magistrature de l'Ontario est

Les juges provinciaux en Ontario – Qui sont-ils?

nommés à la magistrature. droit pendant au moins dix ans avant d'être des milliers de causes par année, ont exercé le rendue. Les juges provinciaux, qui entendent ment provincial pour assurer que justice soit des nombreux juges nommés par le gouverneet en droit de la famille sont entendues par l'un En Ontario, la plupart des causes en droit pénal

# Le système de justice de l'Ontario:

Pour assurer le bon fonctionnement de ce leur connaissance du droit. sur les témoignages qu'ils entendent en cour et de décider de l'issue d'une cause en se fondant Nos juges ont le devoir dississimais essentiel de preuve à un juge dans une salle d'audience. présenter leur version des faits et leurs éléments différend, les deux parties ont la possibilité de contradictoire. Autrement dit, lorsqu'il y a un le système de justice est fondé sur la procédure En Ontario, comme dans le reste du Canada,

ou un groupe de citoyens. gouvernement, une société, un(e) citoyen(ne) mécontenter l'une des parties, que ce soit le raisons, sans se soucier des conséquences de libres de prendre leurs décisions pour les bonnes type de système de justice, les juges doivent être

# La decision d'un juge est-elle finale?

des parents. Souvent, la décision risque fort de au placement des enfants avec l'un ou l'autre prison ou, dans les causes en droit de la famille, d'une amende à la probation ou une peine de conséquences graves. Celles-ci peuvent aller La décision du juge peut entraîner de nombreuses

# DE L'ONTARIO – AVEZ-VOUS UNE PLAINTE? LE CONSEIL DE LA MAGISTRATURE

**VANNEXE** «Y»

# DE L'ONTARIO CONSEIL DE LA MAGISTRATURE

RAPPORT ANNUEL 2002 - 2003

# VANAEXES

Вкосипке

VUNEXE «D»

**VUNEXE «E»** 

**VUNEXE** «C»

Plan de formation continue

Madame la juge Lesley M. Baldwin

dans l'Assaire d'une plainte concernant Conseil de la Magistrature de l'Ontario

Guide de procédures du CMO

**VUNEXE «B»** 

Lois pertinentes

**VUNEXE** «V»

il aurait rejeté l'affaire au lieu d'ordonner une instruction.

Le sous-comité des plaintes a recommandé de rejeter la plainte, au motif qu'elle ne contenait aucune preuve d'inconduite judiciaire. De l'avis du sous-comité des plaintes, il n'y avait aucune preuve de conspiration ou de connivence par les juges concernés et les allégations n'étaient pas étayées par le plaignant. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

nant, des règles de procédure civile. conformément à l'interprétation, par le plaigment des deux parties ou sur motion d'une partie térence préparatoire au procès, sans le consentedésendeur pour renvoyer le dossier à une conment avec le juge suppléant et l'avocat du cause avait, selon le plaignant, collaboré sciemcréances qui était responsable de la gestion de la organisé ». Le juge de la Cour des petites dans ce qu'il a appelé un « crime judiciaire de la Cour des petites créances étaient impliqués cause. Le plaignant a soutenu que les deux juges qui était le juge responsable de la gestion de la d'un autre juge de la Cour des petites créances processus avait été suivi en vertu des instructions nant la motion. Le plaignant a allégué que ce copie de la décision du juge suppléant concer-Cour des petites créances, sans recevoir une l'enjoignant de se présenter devant un juge de la un avis de conférence préparatoire au procès, décision en délibéré. Le plaignant a ensuite reçu pléant qui avait entendu la motion avait pris sa motion. Le plaignant a précisé que le juge suption écrite plaidant contre l'audition de la même de la motion, il avait déposé une déclaratribunal. Il a prétendu également que, le jour ub sisid əl arq eunətdə tanlığallı etmemengiəs la motion avait été acceptée sur la base de renjugement par défaut. Le plaignant a soutenu que

Le plaignant soutenait que le juge de la Cour des petites créances qui a mené la conférence préparatoire au procès avait examiné le dossier avant la conférence et qu'après avoir lu les documents du dossier, il avait ordonné la tenue d'un procès. Le plaignant soutient que si le juge de la conférence préparatoire n'avait pas été impliqué dans ce soi-disant « crime judiciaire organisé »,

# DOSSIER NO 08-078/07

Le plaignant a comparu devant la Cour des petites créances en qualité de plaignant dans une affaire où il tentait de saisir le salaire d'une autre personne. Selon le plaignant, le « défendeur a présenté une motion en vue d'arrêter la saisie » et le juge présidant a pris une décision en délibéré. Lorsque le plaignant a finalement reçu la décision, il a cité des exemples supposés d'« injustice, d'inégalité et de partialité » concernant la décision, et la conduite du juge présidant.

Le sous-comité des plaintes était d'avis que la plainte portait sur la décision du juge et qu'elle ne comportait pas suffisamment de renseignements sur l'inconduite judiciaire, autre que la déclaration sur « l'injustice, l'inégalité et la partialité » alléguées du juge. En conséquence, le sous-comité des plaintes a conclu que la plainte magistrature de l'Ontario, ce dernier ne pouvant pas intervenir dans le processus de prise de décision. Le comité de révision a accepté la recommannant du sous-comité des plaintes de révision a accepté la recommannant du sous-comité des plaintes de révision a secepté la recommannant du sous-comité des plaintes de révision a secepté la recommannant du sous-comité des plaintes de réjeter mandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 08-030/02

Le plaignant a fait savoir qu'il avait déposé une action contre son voisin immédiat devant la Cour des petites créances et qu'il avait obtenu un jugement par défaut, avec dommages-intérêts et dépens. Le plaignant a déclaré qu'après le jugement par défaut, son voisin avait retenu les services d'un avocat qui avait réussi à présenter une vices d'un avocat qui avait réussi à présenter une sans nouveaux renseignements, en annulation du sans nouveaux renseignements, en annulation du

#### DOSSIER NO 08-079/07

Le plaignant, qui n'était pas représenté par un avocat, s'est présenté au tribunal avec une demande, en vertu de la Charte des droits, de sursis de l'instance, pour qu'il puisse « rassembler, préparer et présenter sa défense » au procès. Le plaignant a allégué que le juge présidant avait violé la Charte en refusant sa demande.

Après avoir examiné la plainte, le sous-comité des plaintes a recommandé de rejeter la plainte, au motif qu'il s'agissait plutôt d'une question à soumettre en appel, et que sans preuve d'inconduite judiciaire, la question était hors de la compétence du Conseil de la magistrature de l'Ontario. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

#### DOSSIER NO 08-071/07

La plaignante est la demanderesse dans une alfaire de succession familiale concernant l'exécutrice testamentaire et le transfert de comptes de la succession. Le sous-comité des plaintes a noté que la plaignante avait fait des commentaires généraux sur un certain nombre de juges dans sa lettre au Conseil, mais qu'elle n'avait fait aucune allégation précise d'inconduite.

En conséquence, le sous-comité des plaintes a recommandé de rejeter la plainte et le comité de révision a accepté cette recommandation.

# DOSSIEB NO 08-072/07

Le plaignant est un parent dont les enfants ont été saisis par une Société d'aide à l'enfance. Une audience subséquente sur la protection des enfants a eu lieu en cette affaire. La plainte initiale concernait la durée de l'audience et la communication tardive de la décision. Une fois la décision du juge reçue, une deuxième plainte a décision du juge présidant avait un préjudice contre le plaige nant. Le plaignant a ensuite allégué que le juge présidant se trouvait dans un conflit d'intérêts, parce que, avant sa nomination à la magistrature, il avait travaillé pour un cabinet d'avocate qui il avait travaillé pour un cabinet d'avocate qui représentait la Société d'aide à l'enfance.

plaintes de rejeter la plainte. accepté la recommandation du sous-comité des l'allégation d'impartialité. Le comité de révision a Société d'aide à l'enfance n'appuyait pas en soi cien cabinet d'avocats du juge avait représenté la outre, le sous-comité estimait que le fait que l'andu Conseil de la magistrature de l'Ontario. En inconduite judiciaire, au-delà de la compétence rigées en appel, et elles sont, sans preuve d'une trouvé aucune), ces erreurs peuvent être corle Conseil de la magistrature de l'Ontario n'en a erreurs de droit ont été commises par le juge (et du pouvoir discrétionnaire du juge. Si des évidente d'inconduite judiciaire dans l'exercice au motif qu'elle ne comprenait aucune preuve des plaintes a recommandé de rejeter la plainte, Après avoir examiné la plainte, le sous-comité

Après avoir examiné la plainte, le sous-comité des plaintes a recommandé de la rejeter, au motif qu'elle manquait de bien-fondé. Le sous-comité des plaintes a fait remarquer que la seule « était le fait que les juges n'avaient pas tranché en sa faveur. Le sous-comité des plaintes était d'avis que les plaintes concernaient en réalité les décisions des juges, qui sont susceptibles d'appel, et qu'elles sortaient du champ de compétence du qu'elles sortaient du champ de compétence du preuve d'inconduite judiciaire. Le comité de révisions a accepté la recommandation du soussion a accepté la recommandation du soussion a accepté la recommandation du soussion a accepté la rejeter la plainte.

### DOSSIER NO 08-075/07

Le plaignant, l'intimé dans un litige relatif à la garde de son enfant et au droit de visite de l'enfant, a allégué que le juge avait suspendu le droit de visite sans lui laisser la possibilité de se faire entendre. En outre, le plaignant prétend que le juge lui a refusé de communiquer par un interprète qui était présent à l'instance.

Après avoir examiné la plainte et une copie de la transcription de l'instance, le sous-comité des plaintes a indiqué que le plaignant avait un interprète, nommé par le tribunal, présent tout au long de l'instance et que le juge n'était pas intervenu dans le dialogue entre le plaignant a eu la possibilité de présenter des observations par l'intermédiaire de l'interprète, et les allégations que plaignant ne se trouvaient pas étayées par la transcription. Le sous-comité des plaintes a donc recommandé de rejeter la plainte. Le comité de réjeter la plainte. Le comité de réjeter la plainte. Le comité de réjeter la plainte.

# **DOSSIEB NO 08-070/07**

Le plaignant, une partie à une instance judiciaire, a allégué qu'il y avait des omissions dans la transcription concernant son dossier. Il a soutenu que les omissions portaient sur la décision du juge de ne pas autoriser le plaignant à produire des preuves. Le plaignant a demandé au Conseil de la magistrature de l'Ontario d'enquêter sur l'exactitude de la transcription.

Après avoir examiné la correspondance, le souscomité des plaintes a recommandé de rejeter la plainte, au motif qu'elle concernait le mécontentement du plaignant à l'égard des décisions du juge relatives à l'admissibilité des preuves, et non une allégation d'inconduite judiciaire. Le souscomité des plaintes a également fait observer que la question de l'exactitude ou de l'inexactitude d'une transcription sort du champ de compétence d'enquête du Conseil de la magistrature de tence d'enquête du Conseil de la magistrature de recommandation du sous-comité des plaintes de recommandation du sous-comité des plaintes de rejeter la plainte.

### **DOSSIEB NO 08-071/07**

Le plaignant est l'intimé dans une instance continue de protection d'un enfant. Il a expliqué qu'il était le grand-père paternel de l'enfant au centre de l'instance et que l'enfant avait été retiré de sa garde par une agence d'aide à l'enfance. Le plaignant désirait que l'affaire soit traitée à la Cour criminelle, plutôt qu'à la Cour de la famille, en raison d'une allégation d'inconduite sexuelle portée contre lui. Le plaignant a également porté des allégations contre deux juges différents, qu'il as accusés d'avoir été partiaux dans leur décision a accusés d'avoir été partiaux dans leur décision

que le plaignant pouvait soumettre une requête à la juge lui demandant de se récuser si elle pensait qu'elle ne pouvait rester objective face aux questions concernant le plaignant. Le comité de révision a accepté la recommandation du souscomité des plaintes de rejeter la plainte.

### **DOSSIEK NO 08-019/07**

La plaignante a été condamnée pour mise en circulation d'un faux document, plus particulière-ment pour falsification du montant d'un chèque avant de le présenter aux fins de paiement. La plaignante a eu plusieurs avocats, qu'elle a tous renvoyés. Elle se représentait elle-même lorsqu'elle s'est présentée devant le juge de la conférence préparatoire au procès. La plaignante a allégué que le juge avait fait un certain nombre de commentaires inexacts au sujet de la nature de commentaires inexacts au sujet de la nature l'attitude du juge envers elle était grossière.

sous-comité des plaintes de rejeter la plainte. de révision a accepté la recommandation du grossièreté ou d'inconduite de sa part. Le comité nante et qu'il n'y avait aucune preuve de estimait que le juge avait tenté d'aider la plaigdurant l'instance. Le sous-comité des plaintes paratoire à un procès pénal, à plusieurs reprises la défenderesse, la nature d'une conférence préjuge avait expliqué, soigneusement et en détail, à comité des plaintes a également précisé que le a recommandé de rejeter la plainte. Le sousproférées par la plaignante, et par conséquent, il transcriptions n'appuient pas les allégations des transcriptions de l'instance. À son avis, les sous-comité des plaintes a demandé une copie Dans le cadre de son examen de la plainte, le

à son sujet.

le plaignant, le fait que le juge ait appelé le défendeur « préjugeait » l'issue du procès, car une telle conduite est contraire aux règles du tribunal selon lesquelles un jugement peut être rendu en l'absence d'une partie.

Le sous-comité des plaintes a souligné que la conduite de la conférence préparatoire au procès était laissée à la discrétion du juge de la conférence, et a recommandé de rejeter la plainte. Le sous-comité des plaintes était également d'avis que cette affaire concernait l'exercice du pouvoir discrétionnaire du juge, et non la question de l'inconduite d'un juge, et que pour cette raison d'inconduite d'un juge, et que pour cette raison d'inconduite d'un juge, et que pour cette raison d'inconduite d'un juge, et que pour cette raison discrétionnaire de la magistrature de l'Ontario. Le comité de révision a accepté la recommandation comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 08-018/02

Le plaignant, une partie à une instance devant la Cour de la famille, a allégué que la juge présidant n'avait pas tenu compte de ses observations ni des documents qu'il avait déposés. Le plaignant a également ajouté qu'il était mécontent de la décision prise et que la juge avait un parti pris contre lui. Par conséquent, il demandait au Conseil de la magistrature de réalfecter le dossier à un autre juge, dans un autre tribunal.

Après avoir examiné la correspondance et les documents joints à la plainte, le sous-comité des plaintes a recommandé de rejeter la plainte, au motif qu'elle concernant le mécontentement du plaignant à l'égard de la décision de la juge, et qu'elle n'alléguait aucune inconduite judiciaire. Le sous-comité des plaintes a également précisé

biologiques. La plaignante a prétendu que le juge avait accepté la demande de la SAE et rendu une ordonnance contre son conjoint de fait, parce qu'il était handicapé et qu'elle pesait 400 livres.

Après avoir examiné les documents du dossier, le sous-comité des plaintes a recommandé de rejeter la plainte, au motif que les arguments contenus dans la plainte concernaient la décision d'inconduite judiciaire. Le sous-comité des plaintes a recommandé que si la plaignante se trouvait mécontente de la décision du juge, elle pouvait anécontente de la décision. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 08-017/02

conférence s'était déroulée par téléphone. Selon de conférence préparatoire au procès et que la que le défendeur avait finalement appelé la salle préparatoire au procès. Le plaignant a déclaré dant d'appeler directement la salle de conférence défendeur et lui a laissé un message lui demanle défendeur, le juge a appelé personnellement le Voyant que le demandeur n'avait pas pu joindre phoner au défendeur pour l'inviter à venir. comparution, le juge lui a demandé de télébien qu'il ait signifié au défendeur un avis de paratoire au procès. Le plaignant a ajouté que défendeur, ne s'était présenté à la conférence préque ni le défendeur, ni un représentant du conférence préparatoire au procès. Il a précisé pagné de son représentant, pour participer à une créances et qu'il s'était rendu au tribunal, accomdans une action portée devant la Cour des petites Le plaignant a expliqué qu'il était le demandeur

### DOSSIER NO 08-013/07

de maintenir un niveau glycémie approprié. menteuse et physique à laquelle il est astreint afin santé et de la stricte routine alimentaire, médicaab atait informé tout le monde de son état de lesse extrême ». Le plaignant a également déclaré tion et d'irritabilité » et une « soif, latigue et faibentre un sentiment de « confusion, de désorientalui a causé des symptômes d'hypoglycémie, variant d'être autorisé à prendre une pause-repas, ce qui dans la salle d'audience pendant cinq heures avant Le plaignant a soutenu qu'il a dû rester présent traintes qui pèsent sur lui en raison de son diabète. compte, dan son calendrier d'auditions, des conviolé ses droits de la personne en ne tenant pas allégué que le juge présidant à son procès, avait Le plaignant, qui était accusé de voies de fait, a

Le sous-comité des plaintes a examiné les transcriptions du procès. Il a constaté qu'aucune demande spéciale n'avait été soumise par le plaignant ou son avocat au sujet d'un régime alimentaire ou d'un exercice physique particulier. De l'avis du sous-comité des plaintes, il n'y a aucune preuve d'inconduite judiciaire de la part du juge du procès. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIEB NO 08-014/07

La plaignante est le conjoint de fait du père de deux enfants qui ont été saisis par une Société d'aide à l'enfance (SAE) et placés en placement préventif. La plaignante a déclaré que, pendant l'audience sur la demande de garde de la SAE, cette dernière avait demandé la tutelle par la Couronne sans aucun droit de visite aux parents

de la peine. Le sous-comité des plaintes était d'avis que le plaignant regrettait sa décision de plaider coupable et qu'il cherchait un moyen d'annuler la condamnation, car le délai d'appel était dépassé. Le comfamnation, a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

#### **DOSSIEB NO 08-017/07**

Le plaignant s'est représenté lui-même à l'audi-ence sur l'accusation criminelle dont il faisait l'objet et a prétendu que le juge au procès avait violé ses droits en vertu de la Charte à une séquence, il soutient qu'il n'a pas eu un juste procès. Le plaignant a également allégué que, procès. Le plaignant a également allégué que, procès. Le plaignant a également allégué que, plusieurs reprises « Je n'ai pas eu la possibilité de plusieurs reprises « Je n'ai pas eu la possibilité de procès complète aux allégations portées devant réponse complète aux allégations portées devant le tribunal » et que le juge avait malgré cela pour-le tribunal » et que le juge avait malgré cela pour-le tribunal » et que le juge avait malgré cela pour-

Le sous-comité des plaintes a fait remarquer au comité de révision qu'à son avis, il n'y avait pas eu d'inconduite de la part du juge. Le sous-comité des plaintes a précisé que si les droits du plaignant en vertu de la Charte avaient réellement été violés, une telle décision excéderait la ment été violés, une telle décision excéderait la l'Ontario. Si des erreurs de droit ont été commises par le juge (et le Conseil de la magistrature de n'ontario. Si des erreurs de droit ont été commises par le juge (et le Conseil de la magistrature de n'ontario. Si des erreurs pourraient être corrigées en appel, et elles sont, sans preuve d'une inconduite judiciaire, au-delà de la compétence du Conseil de la magistrature de l'Ontario. Le comité de révision a accepté la recommandation comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

Magistrature de la collectivité où les plaignants exercent. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 08-011/02

mal conduite en le « forçant » à plaider coupable. tribunal désirait ». Il soutient que la juge s'est tait senti contraint, au tribunal, de faire ce que le Toutefois, le plaignant a déclaré qu'à la fin il « s'éde demander qu'un autre juge entende le dossier. intimidé par la juge et il a demandé à son avocat mation, le plaignant s'est immédiatement senti sérieusement ». Après avoir entendu cette infordisant indiqué qu'elle « jugerait l'affaire très son avocat lui avait révélé que la juge avait soitrancherait l'affaire. Le plaignant a précisé que l'audience, pour lui demander comment elle cat lui avait affirmé avoir parlé avec la juge, avant plaider non coupable. Il a prétendu que son avocomparu devant le tribunal dans l'intention de des lésions corporelles. Il a indiqué qu'il avait Le plaignant a été accusé de voies de fait causant

Dans son examen du dossier, le sous-comité des plaintes a demandé une copie des transcriptions de l'instance qu'il a étudiées. À son avis, les transcriptions n'appuient pas les allégations selon lesquelles le plaignant a été contraint par le tribunal, par intimidation, de plaider coupable, et plainte. Il a également signalé que le plaignant était représenté par un avocat qui a accepté la description de l'accusation de voies de fait présentée par le procureur de la Couronne, et qui présentée par le procureur de la Couronne, et qui présentée par le procureur de la Couronne, et qui présentée par le procureur de la Couronne, et qui présentée par le procureur de la Couronne, et qui a fait des observations conjointes sur le prononcé a fait des observations conjointes sur le prononcé

et la date de la note de service du juge étaient mal choisis au vu des circonstances, tout en étant convaincu que la conduite du juge ne constituait pas une inconduite judiciaire d'après la définition énoncée par le Conseil de la magistrature de l'Ontario dans des dossiers précédents. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

#### **DOSSIEK NO 08-009/07**

Les plaignants, deux avocats spécialisés dans le droit de la famille, ont exprimé leur mécontentement à l'égard de la façon dont une juge, devant laquelle ils avaient plaidé, administrait le rôle d'audience. Les deux plaignants ont expliqué qu'ils se trouvaient au tribunal pour présenter une ordonnance sur consentement accompagnée d'une déclaration de fait signée. Les plaignants ont indiqué qu'ils avaient averti préalablement le grelffier de leur alfaire. Méanmoins, malgré leur avis préalable, les plaignants ont soutenu que la avis préalable, les plaignants ont soutenu que la juge avait décidé d'entendre une grande cause juge avait décidé d'entendre une grande cause insecrite au rôle, les faisant attendre 5 heures insecrite au rôle, les faisant attendre 5 heures.

Après avoir examiné les documents produits par les plaignants, le sous-comité des plaintes a recommandé de rejeter la plainte, au motif que l'affaire dépassait la compétence du Conseil de la magistrature de l'Ontario. Le sous-comité des plaintes a fait remarquer que les juges administrent leurs propres rôles, et que le Conseil de la magistrature de l'Ontario ne leur impose aucune restriction à cet égard. Le sous-comité des plaintes était d'avis que cette plainte devrait être portée devant le conseil local ou régional d'administration des tribunaux ou le comité Barreau ministration des tribunaux ou le comité Barreau

de droit ont été commises par le juge, ces erreurs peuvent être corrigées en appel. Le comité de révision a accepté la recommandation du souscomité des plaintes de rejeter la plainte.

#### DOSSIER NO 08-007/02

dans ce processus ». le processus de relations de travail ou à intervenir à des activités spécifiquement destinées à éluder née, « avait participé et coopéré avec l'employeur juge, en rédigeant la note de service susmention-». Les plaignants ont également prétendu que le atmosphère de peur et d'intimidation au travail bunaux dans l'objectif allégué de « créer une l'intention du personnel administratif des tribunaux, et en rédigeant une note de service à grévistes causaient dans l'administration des tricommentaires sur les dérangements que les manque de professionnalisme, en faisant des que le juge avait fait preuve d'inconduite et de tion de la plainte. Le groupe d'employés alléguait (SEFPO), qui avait pris fin juste avant la récepemployés de la fonction publique de l'Ontario durant la grève du Syndicat des employées et bul nu'b stinbnooni'l sh stat de l'inconduite d'un juge bres du personnel d'administration des triavait reçu une plainte d'un groupe de 12 mem-Le sous-comité des plaintes a mentionné qu'il

Dans le cadre de son examen de la plainte, le sous-comité des plaintes a demandé au juge concerné de répondre à la plainte. Après avoir passé en revue tous les documents produits, le souscomité des plaintes a recommandé de rejeter la plainte, au motif qu'il n'y avait aucune preuve évidente d'une inconduite de la part du juge. Le évidente d'une inconduite de la part du juge. Le sous-comité des plaintes estimait que le contenu sous-comité des plaintes estimait que le contenu

de ce risque. Le plaignant a également soutenu qu'il contestait la décision du juge en ce qui concerne sa compétence et celle du tribunal. Le plaignant a déclaré qu'il contestait également l'octroi de la garde provisoire à la Société d'aide à mandé de rejeter la plainte au motif que si le plaignant était mécontent du jugement de la plaignant était mécontent du jugement de la que sans preuve d'une inconduite de la part du juge, l'affaire se trouvait hors du champ de competence du Conseil de la magistrature de pétence du Conseil de la magistrature de l'Ontario. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### **DOSSIEK NO 08-009/07**

mécontente de la décision prise ou si des erreurs la magistrature. Si une partie au procès est elle sort du champ de compétence du Conseil de de son pouvoir discrétionnaire. Par conséquent, inconduite commise par le juge dans l'exercice comprenait aucune allégation ou preuve d'une plainte portait sur la décision d'un juge et elle ne Conseil de la magistrature de l'Ontario. La motif qu'elle était hors de la compétence du plaintes a recommandé de rejeter la plainte au n'était pas appropriée. Le sous-comité des uliers estimaient que la peine imposée par le juge coupables à l'issue du procès. Les quatre particanimaux et les défendeurs avaient été reconnus tait sur des accusations de cruauté envers des l'affaire dans les médias. L'affaire en question porjudiciaire, après avoir lu un compte-rendu de plaindre de la décision d'un juge dans un dossier Conseil de la magistrature de l'Ontario pour se Quatre particuliers ont écrit séparément au

avait témoigné devant le tribunal. Le sous-comité des plaintes a recommandé de rejeter la plainte, au motif qu'aucune allégation d'irrégularité ou d'inconduite de la part d'un juge ne figurait dans la plainte contre aucun des deux juges. Le souscomité des plaintes a également fait observer que si la plaignante était mécontente du jugement du tribunal, elle pouvait faire appel des décisions prises. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 08-004/07

rejeter la plainte. recommandation du sous-comité des plaintes de la plainte. Le comité de révision a accepté la larité ou d'inconduite de la part du juge visé par qu'elle ne contenait aucune allégation d'irrégua recommandé de rejeter la plainte, au motif dre son témoignage. Le sous-comité des preuves dû continuer l'instruction de l'affaire sans entencureur de la Couronne, et que le juge n'aurait pas n'avait pas été appelée à témoigner par le proautorisée à témoigner à l'audience, mais qu'elle plaignante a soutenu qu'elle aurait dû être engagement de ne pas troubler l'ordre public. La réglée lorsque le prévenu avait accepté un qu'à la date prévue du procès, l'affaire avait été avait été portée au rôle. La plaignante a déclaré de fait contre elle et elle a signalé que l'affaire Le conjoint de la plaignante a été accusé de voies

### DOSSIER NO 08-002/07

Le plaignant était l'intimé dans une demande de protection d'un enfant portée devant la Cour de la famille. Il a prétendu que le juge avait été manipulé par la demanderesse et son avocat, malgré le fait que le plaignant avait averti le juge

# **DOSSIEB NO 08-001/07**

du sous-comité des plaintes de rejeter la plainte. comité de révision a accepté la recommandation l'attitude de la juge visée par l'article de journal. Le générale et qu'il n'y avait pas d'inconduite dans gations portées contre les juges d'une façon n'y avait pas de preuve factuelle à l'appui des allérecommandé de rejeter la plainte, au motif qu'il d'indépendance. Le sous-comité des plaintes a aupnam ab 19 silités et de manque juges en général, dont celles de partialité, de proféré plusieurs autres allégations contre des priés pour une salle d'audience. Le plaignant a qu'elle jugeait les vêtements de l'avocat inapproexclu un avocat de sa salle d'audience parce au cours de laquelle, une juge de l'Ontario avait instance qui avait fait couler beaucoup d'encre, avait lu dans un journal le compte-rendu d'une Le plaignant, un résident de Red Deer (Alberta),

## 08-003/07 DOSSIEBS NOS 08-007/07 <sup>¢</sup>I

» des témoins de la Société d'aide à l'enfance qui sion et avait accepté des « preuves non objectives d'aide à l'enfance avait pris une mauvaise décila garde préventive avait été accordée à la Société juge qui présidait l'audience au cours de laquelle plaignante a également soutenu que le deuxième fance concernée avait fournis au tribunal. La aux que le personnel de la Société d'aide à l'ensur la base de renseignements incorrects et partinante a maintenu que le mandat avait été délivré garde de la Société d'aide à l'enfance. La plaigd'appréhender ses enfants et de les placer sous la opposée au fait qu'un juge avait émis un mandat Société d'aide à l'enfance. Elle s'est d'abord garde préventive de ses enfants soumise par une La plaignante était l'intimée d'une demande de

voir discrétionnaire du juge, sans inconduite de sa part, était une question hors du champ de compétence du Conseil de la magistrature de l'Ontario. En conséquence, le sous-comité des plaintes a recommandé de rejeter la plainte, et le comité de révision a accepté cette recommandation.

### **DOSSIEB NO 01-027/07**

du sous-comité des plaintes de rejeter la plainte. comité de révision a accepté la recommandation du Conseil de la magistrature de l'Ontario. Le inconduite de la juge, au-delà de la compétence rigées en appel et elles sont, sans preuve d'une trouvé aucune), ces erreurs pourraient être corla juge (mais le Conseil de la magistrature n'en a Si des erreurs de droit avaient été commises par prises dans le champ de compétence de la juge. crétionnaire et que les décisions avaient été dans l'exercice, par la juge, de son pouvoir disn'y avait aucune preuve d'inconduite évidente recommandé de rejeter la plainte au motif qu'il tranchés contre lui. Le sous-comité des plaintes a rendues contre lui et des dépens que la juge avait ordonnances de soutien alimentaire qui avait été que le plaignant était mécontent de certaines plaintes a également fait remarquer qu'il semblait allégation de parti pris. Le sous-comité des nant n'avait produit aucun fait à l'appui de son sous-comité des plaintes a signalé que le plaigfamille avait un parti pris contre les hommes. Le a comparu dans un dossier du tribunal de la Le plaignant a allégué que la juge devant lequel il

sous-comité des plaintes de rejeter la plainte. de révision a accepté la recommandation du sur la pertinence du mandat à ce stade. Le comité été produits pour obtenir le mandat et plaider défense d'examiner les renseignements qui ont procureur de la Couronne et à l'avocat de la question à soulever au procès, pour permettre au validité d'un mandat de perquisition était une comité des plaintes a également précisé que la raisonnables d'émettre un mandat. Le souspouvoir discrétionnaire de décider des motifs pas rendu coupable d'inconduite en exerçant son rejeter la plainte, au motif que le juge ne s'était le sous-comité des plaintes a recommandé de examiné les documents fournis par le plaignant, dans le cadre de son action civile. Après avoir férence préparatoire au procès avait été fixée ait en justice le juge et la police et qu'une cond'inconduite. Il a en outre déclaré qu'il poursuiv-

### **DOSSIEK NO 01-021/07**

Le sous-comité des plaintes a précisé que cette plainte était l'une des plaintes multiples déposées par le même plaignant contre deux juges et un juge de paix, dans le cadre d'un litige matrimonial. Le sous-comité des plaintes a indiqué que, dans cette plainte, le plaignant prétendait que la conduite du juge constituait une « diffamation du caractère » du plaignant.

Le sous-comité des plaintes a demandé les transcriptions et la bande sonore de l'audience en question et les a examinées. Selon lui, le juge n'a pas fait preuve d'inconduite. Le sous-comité des plaintes a ajouté qu'à son avis, le plaignant était mécontent des diverses ordonnances que le juge présidant avait prises, et que l'exercice du pou

# DOSSIER NO 07-046/02

du sous-comité des plaintes de rejeter la plainte. comité de révision a accepté la recommandation Conseil de la magistrature de l'Ontario. Le inconduite du juge, au-delà de la compétence du rigées en appel et elles sont, sans preuve d'une trouvé aucune), ces erreurs pourraient être corjuge (mais le Conseil de la magistrature n'en a des erreurs de droit avaient été commises par le prises dans le champ de compétence du juge. Si discrétionnaire et que les décisions avaient été de la part du juge dans l'exercice de son pouvoir motil qu'il n'y avait aucune inconduite évidente plainte. Il a recommandé de rejeter la plainte au bunal qui avaient été annexés à la lettre de les documents et les pièces du dossier du tril'Ontario. Le sous-comité des plaintes a examiné avait soumise au Conseil de la magistrature de peut-être en raison d'une plainte précédente qu'il juge « avait une dent personnelle » contre lui, les intérêts de son client, selon lui parce que le juge avait pris de nombreuses décisions contre petites créances. Le plaignant a allégué que le demandeur dans une action devant la Cour des qu'il se trouvait au tribunal pour représenter le Le plaignant, un agent parajuridique, a précisé

# DOSSIER NO 07-049/02

Le plaignant a allégué que son domicile avait fait l'objet d'une « descente illégale » de police, qui cherchait de la drogue. Le plaignant a déclaré que la police ne lui avait produit aucun mandat de perquisition pendant la fouille, et qu'il n'avait vu le mandat qu'après l'avoir demandé à la police et au bureau des mandats du tribunal. Le plaignant a ajouté que le juge qui avait signé le mandat det de perquisition s'était par là rendu coupable dat de perquisition s'était par là rendu coupable

l'utilisation du rapport d'évaluation psychiatrique, à son contenu, aux conditions imposées par le juge ou à la compétence de son avocat. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 07-045/02

Le plaignant, un agent de police des services policiers de Toronto à la retraite, est le père d'une femme qui était témoin de la Couronne à un procès pénal. Il a déclaré que l'ex-mari de sa fille avait violé les conditions d'un engagement de ne pas troubler l'ordre public et se trouvait au tribunal pour son procès. Le plaignant a allégué que le juge qui présidait le procès avait été impoli et insultant au présidait le procès avait été impoli et insultant allégard de sa fille, au sujet de son témoignage.

sous-comité des plaintes. de révision a accepté la recommandation du évaluation de la crédibilité du témoin. Le comité preuve d'inconduite de la part du juge dans son rejeter la plainte, au motif qu'il n'y avait aucune Le sous-comité des plaintes a recommandé de témoignage de la fille du plaignant au tribunal. énumérant les contradictions que contenait le ou insultant, mais simplement direct et précis en plaintes, le juge qui présidait n'a pas été impoli fille du plaignant. De l'avis du sous-comité des al ab agangiomàt al aldibàra àgul asaq sisva'n li'up tions portées contre lui, en grande partie parce déclaré l'ex-mari « non coupable » des accusade l'audience. Il a fait remarquer que le juge avait scriptions du procès, ainsi que la bande sonore Le sous-comité des plaintes a examiné les tran-

une évaluation de son aptitude à subir un procès. Le rapport d'évaluation psychiatrique de l'aptitude de la plaignante à subir un procès avait été produit au tribunal pour examen. Tant le procureur de la Couronne que l'avocat de la défense ont fait des renvois au rapport pendant l'instance, en présence de la plaignante, et elle ne s'est pas opposée à ces renvois au rapport pendant l'audience. La plaignante a plaidé coupable à un chef d'accusation de harcèlement criminel et les faits ont été lus relativement à tous les chefs d'accusation, sans opposition apparente de sa part et avec le consentement de son avocat.

dant le procès, de la part de la plaignante, à également fait état de l'absence d'objection, pende la part du juge. Le sous-comité des plaintes a preuve d'irrégularité, d'inconduite ou d'injustice que les transcriptions ne révélaient aucune de son pouvoir discrétionnaire en la matière et duite évidente de la part du juge dans l'exercice plainte, car il estimait qu'il n'y avait pas d'inconcomité des plaintes a recommandé de rejeter la répondu : « cela ne se produira pas. ». Le sousl'une ou l'autre de ces conditions, ce à quoi elle a comprenait les conséquences d'une violation de c'est clair ». Par ailleurs, on lui a demandé si elle conditions imposées, et qu'elle avait répondu « demandé à la plaignante si elle comprenait les comité des plaintes a ajouté que le juge avait jettie à des nombreuses conditions. Le souschef d'accusation de harcèlement criminel, assuordonné une absolution conditionnelle pour un poser une peine privative de liberté et qu'il avait avait rejeté la demande de la Couronne d'imprononcé de la peine. Il a indiqué que le juge plainte avait été soulevée après l'audience sur le Le sous-comité des plaintes a remarqué que la

### DOSSIER NO 07-044/02

ture de l'Ontario à la plaignante. qui avait été remise par le Conseil de la magistraexaminé une copie de la transcription du procès psychiatrique. Le sous-comité des plaintes a sonnels, en citant un passage d'une évaluation droits de la protection des renseignements peravocat incompétent » et qu'il avait bafoué ses mensonges comme preuves de la part de son « et d'incompétence, et qu'il avait accepté des de première instance avait fait preuve d'injustice de trois ans. La plaignante a allégué que le juge plusieurs conditions et une période de probation instance avait ordonné une absolution sous criminel. Elle a indiqué que le juge de première coupable à un chef d'accusation de harcèlement La plaignante a été condamnée après avoir plaidé

tion, il lui avait été ordonné de se soumettre à pendant plusieurs mois et que, pendant sa détenment état que la plaignante avait été incarcérée tribunal. Le sous-comité des plaintes fait égalereprésentée par un avocat durant l'instance au chirurgiens et ailleurs. La plaignante était bres du personnel du Collège des médecins et victimes étaient de nombreux médecins et memméfait et un chef d'accusation de menaces. Les de harcèlement criminel, un chef d'accusation de devant le tribunal pour cinq chefs d'accusation des faits suivants : la plaignante a comparu chiatrique. Le sous-comité des plaintes a fait état qu'elle avait refusé de subir une évaluation psysuspendu le permis de la plaignante, au motif que le Collège des médecins et chirurgiens avait psychiatre. Le sous-comité des plaintes a précisé d'obtenir un permis pour exercer en qualité de plaignante était médecin, et qu'elle tentait Le sous-comité des plaintes a indiqué que la

la magistrature dans la région où le juge concerné préside. Par ailleurs, après avoir examiné les transcriptions fournies par le plaignant, le sous-comité des plaintes a conclu que les allégations d'inconduite n'étaient pas étayées. Par conséquent, il a recommandé de rejeter la plainte. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

# DOSSIEB NO 01-043/07

Le plaignant a soutenu qu'un juge de la Cour des petites créances avait donné des instructions au juge suppléant qui avait entendu son dossier, et a prétendu que par là, le juge de la Cour des petites créances avait fait preuve de discrimination ou de parti pris à l'égard de sa cause devant les tribunaux. Le sous-comité des plaintes a précisé que les allégations d'« ingérence » par le juge cisé que les allégations d'« ingérence » par le juge ne ressortaient pas clairement de la plainte origine ressortaient pas clairement de la plainte origine ressortaient pas clairement de la plainte originale, et le sous-comité a demandé au plaignant nale, et le sous-comité a demandé au plaignant des renseignements supplémentaires.

Le sous-comité des plaintes a affirmé n'avoir pas reçu de réponse du plaignant à ses multiples demandes de renseignements additionnels et a recommandé de rejeter la plainte, au motif qu'elle ne contenait pas suffisamment de détails pour déterminer la nature de l'inconduite du juge alléguée, et qu'il ne pouvait pas mener une enquête salléguée, et qu'il ne pouvait pas mener une enquête convenable. Le comité de révision a accepté la rejeter la plainte, à condition de rouvrir le dossier de la plainte au cas où le plaignant fournirait les renseignements supplémentaires demandée.

gations du plaignant. Le sous-comité des plaintes a également signalé que la transcription démontrait clairement que le plaignant et son avocat avaient eu l'occasion de se parler avant le début de l'instance. Le sous-comité a ajouté qu'à aucun moment au cours de l'instance le plaignant n'avait exprimé des difficultés de compréhension ou d'ouie en répondant aux questions et que l'avocat du plaignant n'avait fait aucune remarque au tribunal. Le comité de révision a accepté la recommandation du sous-comité des plaintes de recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 07-042/02

Le plaignant, un avocat de la défense, a allégué que le juge objet de la plainte avait « délibérément et activement participé aux conférences préparatoires à l'audience et avait ensuite insisté pour diriger la plus grande partie des procès ». Le plaignant a prétendu que cette pratique était « totalement injuste, partiale et contestable ». Le plaignant cite des causes des 25 dernières années, dans lesquelles le juge l'a « choqué et embarrassé » en tenant la conférence préparatoire au procès, au cours de laquelle, affirme-t-il, il exprimait parfois ses opinions personnelles aux parties, puis présidait ensuite le procès.

Le sous-comité des plaintes a demandé une réponse du juge visé par la plainte. Le sous-comité considère la réponse du juge comme une réponse complète aux allégations du plaignant. En outre, le sous-comité des plaintes a signalé qu'il avait indépendamment vérifié si la pratique du juge de tenir des conférences préparatoires au procès étaient justes et raisonnables, en parlant avec des étaient justes et raisonnables, en parlant avec des membres du barreau local et d'autres membres de membres du parreau local et d'autres membres de

# DOSSIER NO 07-040/02

comité des plaintes de rejeter la plainte. de révision a accepté la recommandation du sousrelevait pas de la compétence du CMO. Le comité et, sans preuve d'inconduite judiciaire, l'affaire ne rendues, il pouvait interjeter appel des décisions ment de la cour en ce qui concerne les décisions noté que si le plaignant n'était pas satisfait du jugeprocès. En outre, le sous-comité des plaintes a l'introduction de l'instance jusqu'au début du selon lequel un juge est affecté à une cause, depuis préhension du processus de gestion des causes était clair que le plaignant n'avait aucune complaintes a recommandé le rejet de la plainte car il déroulement de l'instance. Le sous-comité des responsable de la gestion de la cause durant le pas satisfait des décisions rendues par le juge leur mariage. Le plaignant a déclaré qu'il n'était ab sussi et les droits de visite des enfants issus de suite d'un litige avec son ex-épouse concernant la Le plaignant a comparu devant les tribunaux à la

### DOSSIER NO 07-041/02

Le plaignant, défendeur dans une instance, a allégué que le juge avait été « inhumain » et « barbare » et qu'il l'avait « détruit ». Le plaignant a prétendu qu'il était sourd et que, parce qu'il ne portait pas un appareil auditif au cours de l'instance judiciaire, il n'avait pas pu discuter de l'affaire avec son avocat en comprenant bien ce qui se passait. Il a soutenu que le juge ne leur avait pas donné l'occasion, à lui et à son avocat, de se parlet avant le début de l'audience.

Après avoir examiné la plainte et la transcription de l'audience, le sous-comité des plaintes a conclu que la transcription ne soutenait pas les allé

#### DOSSIER NO 07-039/02

rejeter la plainte. recommandation du sous-comité des plaintes de la Couronne. Le comité de révision a accepté la de l'accusé n'avait rien à voir avec la demande de associé dans le cabinet de l'avocat de la défense Couronne et le fait que le juge ait été un ancien avait accepté la demande du procureur de la plaintes a noté que le juge dans cette instance bunal de retirer l'accusation. Le sous-comité des toute étape de la poursuite, demander au triune accusation devrait être poursuivie et peut, à pouvoir discrétionnaire ultime de déterminer si souligné que le procureur de la Couronne a le l'accusation. Le sous-comité des plaintes a décision du procureur de la Couronne de retirer évidente dans la décision du juge d'accepter la au motif qu'il n'y avait pas d'inconduite judiciaire des plaintes a recommandé le rejet de la plainte » le procureur de la Couronne. Le sous-comité inconduite de la part du juge pour « avoir suivi de l'accusé et, qu'en conséquence, il y avait eu associé dans le cabinet de l'avocat de la défense Couronne de retirer l'accusation était un ancien accepté la demande du procureur de la nent. La plaignante fait valoir que le juge qui a l'avis de la plaignante, un casier judiciaire pertiduction par effraction est son voisin et qu'il a, de sion, surtout que la personne accusée d'introdéclaré qu'elle n'était pas satisfaite de cette décidate fixée pour le procès. La plaignante a aussi d'introduction par effraction contre l'accusé à la cureur de la Couronne avait retiré l'accusation tion par effraction. Elle a déclaré que le pro-La plaignante était une victime d'une introduc-

rejeter la plainte. recommandation du sous-comité des plaintes de l'Ontario. Le comité de révision a accepté la pétence du Conseil de la magistrature de preuve d'inconduite judiciaire, hors de la compourraient faire l'objet d'un appel et sont, sans erreurs de droit ont été commises, ces erreurs tionnaire de rejeter la cause du plaignant. Si des dans l'exercice par le juge de son pouvoir discréil n'y avait pas d'inconduite judiciaire évidente recommandé le rejet de la plainte car, à son avis, seignements, le sous-comité des plaintes a prise en charge. Après l'examen de ces rensive du processus et qui n'était pas sérieusement de rejeter la cause a mis fin à une demande abuune transaction. A son avis, la décision du juge de répondre aux questions du juge relatives à démontrer une connaissance réelle de la cause ou dataire du plaignant n'était pas en mesure de version relatée par le juge, à savoir que le mandemande. L'avocat du défendeur a soutenu la plaignant ne s'occupait pas sérieusement de la de se présenter, le juge a eu l'impression que le mesures pour informer la cour de son incapacité omis de se présenter ou de prendre d'autres loi applicable. De plus, lorsque le plaignant a nant n'était pas bien au courant des faits et de la a noté qu'il croyait que le mandataire du plaigconsérence préparatoire. Dans sa réponse, le juge de l'avocat du défendeur qui avait participé à la reçu un compte rendu de la conférence de la part disponible. De plus, le sous-comité a demandé et Par conséquent, aucune transcription n'est dans les dossiers de la Cour des petites créances. férences préparatoires ne sont pas consignées juge était nécessaire car les audiences de con-

cernant l'allégation d'affaire extra-conjugale soit rejetée car elle a été niée avec véhémence par les deux parties et parce que, de toute façon, elle ne relève pas de la compétence du Conseil de la magistrature. Le sous-comité des plaintes a recommandé que les allégations d'ingérence dans les dossiers de droit de la famille de plaignant et soient rejetées au motif qu'elles ne sont pas soient rejetées au motif qu'elles ne sont pas fondées. Le sous-comité des plaintes a indiqué que le plaignant et son ex-épouse n'avaient famais comparu devant le juge. Le comité de jamais comparu devant le juge. Le comité de révision a accepté la recommandation du sous-révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 07-038/02

s'occupait pas sérieusement » de sa demande. férence préparatoire laissait présumer qu'il ne « préparatoire à savoir que son absence à la concommentaire qu'aurait fait le juge à la conférence du plaignant. Le plaignant a aussi contesté un préparatoire en adjugeant les dépens à l'encontre dataire et a rejeté la demande à la conférence vant, le juge a refusé la qualité pour agir du manson mandataire ait été bien informé d'aller de l'ament. Le plaignant prétend que malgré le fait que présenter lui-même en raison d'un autre engageférence préparatoire car il ne pouvait pas se dataire pour participer en son nom à une cona déclaré qu'il avait retenu les services d'un mancivil à la Cour des petites créances. Le plaignant Le plaignant était demandeur dans une action au

Le sous-comité des plaintes a examiné la plainte et a demandé une réponse du juge. Le sous-comité des plaintes a déclaré qu'une réponse du

ny avait pas d'inconduite judiciaire évidente dans l'exercice par un juge de son pouvoir discretionnaire en rendant sa décision malgré ses conséquences financières négatives aur la plaiganante. Le sous-comité des plaintes a noté qu'un appel de la décision du Bureau des obligations familiales serait l'unique recours indiqué. Sans preuve d'inconduite judiciaire, la plainte est hors de la compétence du Conseil de la magistrature de l'Ontario. Le comité de révision a accepté la recommandation du sous-comité des plaintes de recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 07-037/02

l'ex-épouse du plaignant. favoritisme à l'égard de l'avocat qui représentait son ex-épouse et que le juge a fait preuve de garde et les droits de visite entre le plaignant et est intervenu dans le différend portant sur la d'elle. En outre, le plaignant prétend que le juge l'épouse du plaignant et qu'il avait eu un enfant opu'il avait une affaire extra-conjugale avec plaignant contre le juge étaient des allégations tence. Les plaintes spécifiques formulées par le autres personnes ne relevant pas de sa compéprovincial uniquement, les plaintes contre les sur les allégations d'inconduite contre le juge Conseil de la magistrature a mené une enquête personnes, y compris un juge provincial. Le tions d'inconduite contre un certain nombre de devant la Cour de la famille et a fait des alléga-Le plaignant était partie à un litige en instance

Le sous-comité des plaintes a examiné les documents de la plainte et la réponse qui avait été demandée du juge en question. Le sous-comité des plaintes a recommandé que la plainte condes plaintes a recommandé que la plainte de la plainte et la recommandé de la plainte de la plainte et la recommandé de la plainte de la plainte et la recommandé de la plainte et la recommandé de la plainte de la plainte et la recommandé de la plainte de la plainte et la recommandé de la plainte de la plainte de la recommandé de la plainte de la recommandé de la recomman

recommandation du sous-comité des plaintes de l'Ontario. Le comité de révision a accepté la pétence du Conseil de la magistrature de preuve d'inconduite judiciaire, hors de la compourraient faire l'objet d'un appel et sont, sans magistrature n'en a relevé aucune), ces erreurs ont été commises par le juge (et le Conseil de la la compétence du juge. Si des erreurs de droit nement et que les décisions rendues relèvent de pouvoir discrétionnaire en refusant le cautionaire évidente dans l'exercice par le juge de son comité estime qu'il n'y a pas d'inconduite judicipas de la compétence du CMO. En effet, le souserté sous cautionnement du plaignant ne relevait -dil na asim el àsutat refusé la mise en lible sous-comité des plaintes a noté que la plainte juge avait fait consigné cette déclaration. De plus, cour en erreur sur une question importante et le ocat du plaignant du tribunal car il avait induit la motif que le juge avait eu raison de renvoyer l'avplaintes a recommandé de rejeter la plainte au scription des témoignages, le sous-comité des lui. Après avoir examine une copie de la tranavait interdit de se présenter à nouveau devant renvoyé » son avocat de la salle d'audience et lui » tieve agul al aup iszue ubnatáry a trangialq al

### DOSSIER NO 07-036/02

rejeter la plainte.

La plaignante n'était pas satisfaite des ordonnances judiciaires rendues par un juge qui restreignaient la capacité du Bureau des obligations familiales de suspendre le permis de conduire de son ex-époux comme punition de ne pas avoir payé la pension alimentaire qu'il lui devait. Le sous-comité des plaintes a recommandé le rejet de la plainte car il a estimé qu'il mandé le rejet de la plainte car il a estimé qu'il

pour formuler une plainte. Le sous-comité des plaintes a recommandé de rejeter la plainte au motif que l'examen de la transcription du procès qui leur a été fournie par le plaignant n'avait pas permis de révéler une partialité ni inconduite judiciaire de la part de la juge d'instruction, et que la plainte était sans fondement. Le comité de révision a accepté la recommandation du sous-révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

# **DOSSIEB NO 02-078/01**

Le plaignant est le père d'enfants qui ont fait l'objet d'une requête par la Société d'aide à l'enfance (SAE) d'assumer la garde temporaire des enfants pour leur propre protection. Le plaignant prétend que le juge a bafoué ses droits civils et humains en rendant une ordonnance contre lui et en accordant à la SAE la garde temporaire de et en accordant à la SAE la garde temporaire de ses enfants.

Le sous-comité des plaintes a examiné la transcription de l'audience et a déclaré qu'à son avis, le juge qui a entendu la requête n'avait pas démontré une inconduite judiciaire. En outre, le sous-comité des plaintes a indiqué que la conduite du juge à l'audience était entièrement indiquée et a, par conséquent, recommandé le rejet de la plainte. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

### DOSSIER NO 07-030/01

Le sous-comité des plaintes a indiqué que le plaignant faisait l'objet d'accusations criminelles devant les tribunaux. Le plaignant n'était pas satisfait du juge du fait que celui-ci lui avait refusé la mise en liberté sous cautionnement. Toutefois,

> plaintes de rejeter la plainte. accepté la recommandation du sous-comité des inconduite judiciaire. Le comité de révision a anu seq telle attitude ne représentait pas une indiqué. Le sous-comité des plaintes a convenu ulier d'un tribunal satellite n'était pas contrecivilité professionnelle dans le contexte particajouté qu'à son avis, faire ouvertement preuve de genre à leurs avocats, par le passé. Le juge a accuses avaient déjà fait une demande de ce ne pas s'y rendre. Le juge a affirmé que des ce jour-là, il aurait pu demander à son avocat de juge et au personnel du tribunal pour déjeuner n'était pas d'accord que son avocat se joigne au durant cette conversation sur le déjeuner et s'il Le juge a noté que le plaignant était présent jet d'une discussion et tous les avocats le savent. en instance devant le tribunal ne sont jamais l'ob-

### **DOSSIEB NO 01-079/01**

unique recours » était de s'adresser au CMO dans la décision de la juge, il a conclu que son « n'avait pas observé d'erreur ou de partialité » tenue. Il ajoute que comme le juge d'appel « bilité et que la condamnation avait été mainavait interjeté appel de la déclaration de culpachose que la vérité ». Le plaignant a déclaré qu'il croire que l'agent [de police] pouvait dire autre qu'elle n'avait pas « la lucidité ni la capacité de pas l'expérience d'un juge « mûr » en ce sens volant). Le plaignant ajoute que la juge n'avait (organisation des mères contre l'alcool au tude ancrée d'organisations comme M.A.D.D. » de la police » et/ou que la juge « souscrit à l'attifait preuve d'un « parti pris manifeste en faveur affaiblies. Le plaignant a allégué que la juge avait déclarée coupable de conduite avec facultés Le plaignant est le père d'une personne qui a été

de l'instance. En outre, le sous-comité des plaintes a indiqué que le juge ne pouvait être tenu responsable des commentaires qui auraient été soi-disant faits à son sujet par l'avocat du plaignant. Le sous-comité des plaintes a également mentionné la réponse du juge à la question de l'invitation qu'il a lancée pour déjeuner avec l'avocat du plaignant.

besoins en matière de ressources mais les causes bunaux satellites, de l'aide juridique et d'autres tions générales concernant l'efficacité des triparfois au juge et aux avocats de discuter de quesle fait de prendre le déjeuner ensemble permet la défense sont ensemble. Le juge a aussi noté que déjeuner que si les avocats de la Couronne et de cats ne sont autorisés à se joindre au juge pour bunal au déjeuner. Le juge a ajouté que les avo--iri ub lannorisque et au personnel du trile temps et les circonstances le permettent, pour qu'ils puissent aller ailleurs s'ils le désirent ou, si sonnel du tribunal prennent leur repas pour de la Couronne de l'endroit où le juge et le perl'habitude d'informer les avocats de la défense et localité où il y avait peu de restaurants. Il a que l'audience avait lieu dans une très petite uner. Le juge a précisé qu'il a agi de la sorte parce personnel du tribunal allaient prendre le déjeplaignant pour le laisser savoir où il (le juge) et le Le juge a noté qu'il s'est approché de l'avocat du la conversation entre le plaignant et son avocat. n'était pas à une distance permettant d'entendre plaignant pour lui parler. Le juge a déclaré qu'il interrompe brièvement sa conversation avec le attendu que l'avocat remarque sa présence et plaignant qui parlait au plaignant et qu'il a la pause-déjeuner, il avait observé l'avocat du Dans sa réponse, le juge a expliqué que, durant

#### **DOSSIEK NO 01-072/01**

du juge d'instruction. constituait une inconduite judiciaire de la part que ce comportement était contre-indiqué et du personnel juridique ». Le plaignant prétend poser à son avocat d'aller déjeuner avec le reste que le plaignant avait avec son avocat « pour produ plaignant, a interrompu une discussion privée procès, le juge qui siégeait s'est adressé à l'avocat déclaré que lors d'une pause déjeuner durant son que « ce juge veut t'avoir ». Le plaignant a aussi juge « avait une dent contre lui » (le plaignant) et vices pour le représenter lui avait déclaré que le prétendu que l'avocat dont il avait retenu les sercours du procès. Plus précisément, le plaignant a qu'il s'est comporté de manière inappropriée au dice en faveur de la police et des poursuivants et avait un parti pris contre lui, qu'il avait un préjule plaignant s'est plaint que le juge au procès cieuse. Dans les lettres qu'il a envoyées au CMO, etaient impliquées dans une poursuite malide fait. Il affirme que la police et la Couronne ayant joué un rôle dans l'affaire relative aux voies l'Ontario de la conduite de toutes les personnes du Procureur général et à la Police provinciale de de ménage. Il s'est plaint au CMO, au ministère de fait contre son beau-père lors d'une querelle Le plaignant avait été déclaré coupable de voies

Le sous-comité des plaintes a ordonné une copie de la transcription du procès qu'il a examinée, puis a demandé au juge de répondre. Le sous-comité des plaintes a recommandé de rejeter la plainte car la transcription ne révélait ni parti pris ni de préjudice ni commentaires inappropriés de la part du juge. Le sous-comité des plaintes a noté que le juge avait fait preuve de plaintes a noté que le juge avait fait preuve de beaucoup de patience avec le plaignant au cours

dossier pouvait désormais être classé. ol sup supibni a 19 de en chef et a indiqué que le a exprimé sa satisfaction à l'égard du rapport que grave erreur de jugement. Le comité de révision des remords sur ce qu'il a reconnu avoir été une avaient été respectées et que le juge avait exprimé les conditions imposées au renvoi de la plainte au comité de révision qu'il était convaincu que juge visé par la plainte, le juge en chef a déclaré ordinateur. Après avoir tenu une réunion avec le matériel inapproprié qu'il avait placé sur son d'autres juges qui sont entrés en contact avec le devrait aussi s'excuser auprès du personnel et d'accéder à des sites Web inappropriés et qu'il gouvernement, pour qu'il ne soit pas en mesure sur l'ordinateur du juge, qui est la propriété du pensait qu'il faudrait installer un « filtre Web » de certaines conditions. Le comité de révision ant la question au juge en chef en l'assortissant répondre à cette erreur de jugement en renvoybres du comité de révision ont décidé qu'il fallait la plainte et du rapport de l'enquêteur, les memla plainte au juge en chef. Après avoir discuté de recommandé au comité de révision de renvoyer comportement. Le sous-comité des plaintes a admis avoir été profondément embarrassé de son était clairement contre-indiqué et incorrect. Il a gouvernement dans un bureau du gouvernement que l'accès à ces sites Web sur un ordinateur du partir de sites Web « gratuits ». Le juge a reconnu uelles sur son ordinateur qu'il avait téléchargés à représentation très graphique d'activités sextain nombre de documents montrant une aussi reconnu avoir entreposé auparavant un cerexplicites pour adultes le soir en question. Il a un certain nombre d'images pornographiques

Dans sa réponse, le juge a reconnu avoir imprimé

#### DOSSIER NO 07-024/01

cette plainte. des plaintes a demandé au juge de répondre à de sites Web pornographiques. Le sous-comité nature sexuelle pour adultes, téléchargés à partir fichiers contenaient des images graphiques de rétablir certains des fichiers supprimés et ces quêteur pour inspection. L'enquêteur a pu l'ordinateur ne soit mis à la disposition de l'enprimés du disque dur de l'ordinateur avant que nombre important de fichiers avaient été sup-Toutefois, l'analyse a permis de découvrir qu'un présence de fichiers reliés à la soirée en question. du disque dur de l'ordinateur n'avait pas révélé la chargé des ordinateurs a déclaré qu'une analyse magistrature pour inspection. Le sous-comité la disposition de l'enquêteur du Conseil de la question. Lordinateur portatif du juge a été mis à trouvait à son bureau à ce moment-là, le soir en teur avait été utilisé au palais de justice se tice a également révélé que le juge dont l'ordinaquestion. Le registre de sécurité du palais de jusjuge entre 19 h 20 et 21 h 20 de la soirée en avait établi une connexion sur l'ordinateur du enquêteur privé qui a confirmé que quelqu'un comité des plaintes a retenu les services d'un découverte des documents en question. Le sousimprimés sur l'ordinateur d'un juge la veille de la serveur a révélé que les documents avaient été Un examen du registre de l'imprimante reliée au aux tribunaux du palais de justice en question. Les documents ont été remis au chef des services commune, dans un bureau du palais de justice. adultes dans le bac à papier de l'imprimante ments graphiques de nature sexuelle pour découvert un certain nombre de pages de docu-Le CMO a appris qu'un juge d'un tribunal avait

#### DOSSIER NO 07-023/01

moque de ce qui arrive à votre enfant. » nante prétend que le juge lui a dit : « Je me entachées de préjugés raciaux. En outre, la plaigvations faites par les parties à l'audience étaient que les décisions du juge concernant les obserplaider ces motions, la plaignante a fait valoir parution antérieure en cour. En essayant de juge qui avait présidé l'audience lors de sa comqui, selon elle, n'avaient pas été tranchées par le expliqué qu'elle voulait déposer trois motions natoire » à l'égard de sa cause. La plaignante a injustice flagrante » et d'une « attitude discrimiet méprisant et qu'il avait sait preuve d'une « a prétendu que le juge présidant avait été grossier dent qui a fait l'objet de la révision, la plaignante de la famille par diverses motions. Dans l'incimesures de redressement dans une cause de droit représentée elle-même, tentant d'obtenir des La plaignante était une demanderesse, qui s'était

plaintes de rejeter la plainte. a accepté la recommandation du sous-comité des magistrature de l'Ontario. Le comité de révision ne relève pas de la compétence du Conseil de la judiciaire, l'exercice du pouvoir discrétionnaire De plus, sans aucune indication d'inconduite tant les demandes de motion par la plaignante. avait exercé son pouvoir discrétionnaire en traisous-comité des plaintes a estimé que le juge et d'expliquer le processus à la plaignante. Le simplement de contrôler la procédure judiciaire comité des plaintes a indiqué que le juge tentait duite judiciaire de la part du juge. Le sousavis, la transcription n'a montré aucune incon-Il a recommandé le rejet de la plainte car, à son de la transcription de l'audience qu'il a examinée. Le sous-comité des plaintes a ordonné une copie

l'ordre public qui a finalement été conclu. Le sous-comité des plaintes n'a pas trouvé d'inconduite de la part du juge dans cette affaire. Le comité de révision a accepté la recommandation du sous-comité des plaintes de rejeter la plainte.

#### DOSSIER NO 07-015/01

avaient été demandés à l'appui de ses allégations. nissait les renseignements complémentaires qui dossier pourrait être rouvert si le plaignant fourplaintes de rejeter la plainte, en précisant que le accepté la recommandation du sous-comité des compétence du CMO. Le comité de révision a duite judiciaire, l'affaire dépassait le champ de sions rendues. En l'absence de preuve d'inconde procédure, il pouvait interjeter appel des décicour ou s'il constatait la présence d'irrégularités le plaignant n'était pas satisfait du jugement de la sous-comité des plaintes a également noté que si satisfait des décisions rendues dans sa cause. Le également que d'après lui, le plaignant n'était pas répondu. Le sous-comité des plaintes a noté sismel iieva y'n iup inengialq ub séiqua pièces et de documents avaient été formulées rejet de la plainte car plusieurs demandes de Le sous-comité des plaintes a recommandé le faisait qu'écouter l'avocat de la mère des enfants. manquait toute connaissance du droit et qu'il ne dossier, s'est induit lui-même en erreur, qu'il lui tend que le juge saisi de la cause a mal géré le une affaire continue de garde. Le plaignant préce litige qui dure depuis si longtemps portait sur des plaintes a indiqué au comité de révision que Cour de la famille depuis 1999. Le sous-comité déclaré être partie à un litige en instance à la Le plaignant, qui se représentait lui-même, a

cour de la famille. » la « cour criminelle s'était transformée... en une sentait que « ce tribunal était une farce » et que La plaignante a poursuivi en déclarant qu'elle passait et je voulais que l'audience prenne fin ». dans un tel état que je ne savais plus ce qui se La plaignante a ajouté qu'à ce moment-là « j'étais aurait aucune différence si elle signait un papier. bler l'ordre public ne suffirait pas et qu'il n'y qui elle a parlé qu'un engagement de ne pas trounante a déclaré qu'elle avait informé l'avocat à pas troubler l'ordre public. En outre, la plaigexpliqué la signification de l'engagement de ne suspension de l'audience et que cet avocat leur a époux ont chacun parlé à un avocat durant une dre public. La plaignante affirme qu'elle et son conclure un engagement de ne pas troubler l'orun procès et avait recommandé aux parties de

préparatoire et à l'engagement de ne pas troubler ties ont participé volontairement à la conférence sous-comité des plaintes a noté que toutes les par-Cette situation a été expliquée aux parties. Le tenu devant un autre juge à une date ultérieure. pour toutes les parties, un procès pourrait être conférence préparatoire n'était pas satisfaisant réponse du juge que si l'accord conclu durant la de la transcription de l'audience ainsi que de la des plaintes a déclaré qu'il ressortait clairement consérence préparatoire. En outre, le sous-comité les parties avaient convenu de la tenue d'une commencer le procès à la date fixée et que toutes juge que la Couronne n'était pas en mesure de la transcription de l'instance et la réponse du de la plainte, au motif qu'il était évident d'après sous-comité des plaintes a recommandé le rejet et a demandé et examiné la réponse du juge. Le iné une copie de la transcription des témoignages Le sous-comité des plaintes a ordonné et exam-

accepté la recommandation du sous-comité des disposition du plaignant. Le comité de révision a en vertu de la Charte était la seule défense à la son avocat car la demande infructueuse déposée un plaidoyer de « culpabilité » selon le conseil de changé son plaidoyer de « non-culpabilité » en a déclaré que le plaignant avait probablement plaintes a aussi noté que, dans sa réponse, le juge d'impartialité de sa part. Le sous-comité des demande n'aboutitait pas et non pas le manque tions qui ont amené le juge à conclure que la trivoles et sans fondement. Ce sont ces constata-Charte et que ces arguments étaient totalement ments en faveur d'une demande invoquant la que l'avocat du plaignant avait formulé des argunoté que, dans sa réponse, le juge avait déclaré celui-ci le prétend. Le sous-comité des plaintes a aient pas une intimidation du plaignant comme sa suggestion concernant les dépens ne constituplaintes a aussi estimé que la décision du juge et pas une inconduite judiciaire. Le sous-comité des Couronne concernant les dépens ne constituait de la Charte et qu'il ait fait une suggestion à la les arguments soulevés par le plaignant en vertu le simple fait que le juge n'ait pas convenu avec ments. Le sous-comité des plaintes a estimé que le rejet de la plainte après l'examen des docu-

#### DOSSIER NO 07-009/01

plaintes de rejeter la plainte.

La plaignante a déclaré avoir déposé une accusation de voies de fait contre son époux. Elle a affirmé qu'après la pause-déjeuner, le procureur de la Couronne s'était approché d'elle pour lui dire que « le juge le poussait et voulait tenir une conférence préparatoire pour voir si nous devriconférence préparatoire pour voir si nous devricons avoir un procès ». La plaignante a déclaré qu'au début de l'audience, le juge préférait éviter qu'au début de l'audience, le juge préférait éviter

À la fin de l'audience, le comité de l'audience a déterminé que même si la plainte n'était pas entièrement sans fondement, une conclusion d'inconduite judiciaire n'était pas justifiée. On trouvera le texte intégral des « motifs de la décitiouvera le texte intégral des « motifs de la décition » dans cette affaire à l'Annexe « E ».

#### DOSSIER NO 07-006/01

un juge qui a fait une telle suggestion. de ne pas pouvoir avoir un procès équitable avec en un plaidoyer de « culpabilité » car il était sûr de changer son plaidoyer de « non-culpabilité » concernant les dépens qu'il a informé son avocat tellement intimidé par cette suggestion du juge En outre, le plaignant prétend qu'il s'est senti attitude montrait la partialité du juge à son égard. par le plaignant. Le plaignant prétend que cette devrait demander le remboursement des dépens juge a suggéré au procureur de la Couronne qu'il juge contre ses arguments en vertu de la Charte, le fiée. Le plaignant a déclaré qu'après la décision du -izzuj izzus tiató testocotest était ausi justil'agent était justifiée et que la détention de l'acstatué que l'arrestation de l'accusé/plaignant par a rejeté les demandes fondées sur la Charte et a droits du plaignant en vertu de la Charte. Le juge le procès concernant la présumée violation des qui a formulé divers arguments au tribunal avant non-culpabilité ». Il était représenté par un avocat bunal pour inscrire une déclaration de « duite avec facultés affaiblies, a comparu au tri-CMO par le plaignant. Celui-ci, accusé de con-Les renseignements suivants ont été fournis au

Le sous-comité des plaintes a ordonné et examiné une copie des transcriptions des preuves, et a demandé au juge une réponse à la plainte formulée. Le sous-comité des plaintes a recommandé

juge au procureur général, à savoir qu'elle n'a pas observé de « changement perceptible dans la manière dont les avocats abordent ces causes difficiles devant les tribunaux criminels ». Les deux plaignants prétendent que l'expression d'un tel point de vue était « contraire à la neutralité requise d'un juge » et que « si elle désire défendre un point de vue politique particulier, elle ne peut pas et devrait pas le faire pendant qu'elle assume sa charge de juge ».

ence devrait être tenue sur l'affaire. conduite judiciaire inappropriée et qu'une audiont jugé que le fait de soutenir une thèse est une sous-comité des plaintes et du comité de révision son rapport posait un problème. Les membres du que le comité eut complété son mandat et soumis de pression » envoyée au procureur général après est question ne pose aucun problème, la lettre « ticipe au travail d'un comité comme celui dont il le fait qu'un juge agisse comme président ou parle sous-comité des plaintes, a décidé que même si après avoir examiné les documents recueillis par plainte aux membres du comité de révision qui, mixte. Le sous-comité des plaintes a renvoyé la sa réponse une copie du rapport du comité entendre incorrectement. La juge a aussi joint à comme les lettres des plaignants le laissaient Couronne et non sur les avocats de la défense portaient uniquement sur les procureurs de la clairement que ses remarques sur les « avocats » cette réponse. Dans sa réponse, la juge a indiqué une réponse à la plainte formulée et a examiné Le sous-comité des plaintes a demandé à la juge

Un avis d'audience a été délivré et une audience a été tenue le 2 avril 2002. Comme les critères pour une audience à huis clos n'étaient pas réunis, l'audience était publique.

La Criminal Lawyers Association (CLA) prétend qu'il était contre-indiqué pour un juge de présider un comité dont les recommandations portaient sur le problème de la violence familiale. La CLA prétend qu'une telle conduite est « contraire à la séparation des pouvoirs judiciaire et exécutif qu'un juge soit impliqué dans ce genre de travail ... en participant au comité en tant que juge, elle risque d'associer l'ensemble de la magistrature à un seul point de vue politique sur ce jetrature à un seul point de vue politique sur ce problème social ».

tralité judiciaire adéquate sur la question ». la juge « était incapable de maintenir une neupoints de vue » et a suggéré que, par conséquent, pressions en vue de la mise en œuvre de ces fait valoir que la juge a continué à « exercer des pas importuner le procureur général ». La CLA a politique au sujet de laquelle un juge ne devrait lème social réel ou perçu est une question ment est mise en œuvre en réponse à un probque « la façon dont la politique du gouvernel'enquête et du comité mixte. La CLA estimait recommandations et stratégies existantes » de plaindre du « manque de mise en œuvre des publication du rapport du comité mixte pour se par écrit avec le procureur général un an après la juge qui a présidé le comité mixte a communiqué pour le gouvernement ». La CLA a ajouté que la période pendant laquelle il ou elle « travaille devrait se désister de sa charge judiciaire pour la conseiller le pouvoir exécutif, le juge en question commissions d'enquête ou des examens afin de membres de la magistrature participent à des Par ailleurs, la CLA a déclaré que lorsque les

La CLA et les deux avocats du secteur privé ont contesté l'observation faite dans la lettre de la

#### 00-074/00 DOSSIEBS NOS 00-015/00 61

mière page du numéro du 19 juillet 2000. article dans le Toronto Star qui a été publié en predu comité mixte. Les lettres ont formé la base d'un ont été remises aux médias par l'un des membres copie de la lettre des autres membres du comité, siège ». La lettre au procureur général, ainsi qu'une difficiles devant les tribunaux criminels où je la manière dont les avocats abordent ces causes n'ai observé aucun changement perceptible dans demandes et je peux ajouter incidemment que je cureur général, la juge a noté « je soutiens leurs rapport du comité mixte. Dans sa lettre au proœuvre les recommandations contenues dans le dant au gouvernement d'agir pour mettre en des quatre autres membres du comité, demangénéral, en juillet 2000, en joignant une lettre présidente du comité mixte, a écrit au procureur en août 1999. La juge, en sa qualité d'ancienne comité mixte a été présenté au procureur général victime de violence familiale. Le rapport du ner qui avait déjà eu lieu sur le meurtre d'une ble les recommandations d'une enquête de corola manière de mettre en vigueur le mieux possigénéral et le gouvernement de l'Ontario quant à comité mixte était de conseiller le procureur matière de violence familiale. Le mandat du posé de hauts fonctionnaires et d'experts en « Comité mixte de la violence familiale », coml'Ontario concernant un juge qui avait présidé le ont écrit au Conseil de la magistrature de (Criminal Lawyers Association). Les plaignants défense spécialisés en matière criminelle membres d'une association d'avocats de la deux avocats du secteur privé et la deuxième de Deux plaintes ont été reçues : la première de

35	88	6+	15	<del>†</del> 9	ΙS	Ιt	En instance à la fin de l'exercice	
84	63	63	99	<del>†</del> 9	95	ΙS	Classés durant l'exercice	
08	101	711	173	871	201	76	Total des dossiers ouverts durant l'exercice	
18	6 <del>†</del>	25	<del>+</del> 9	ΙS	Ιħ	17	Reportés de l'exercice précédent	
6+	75	22	65	22	99	IΖ	Ouverts durant Pexercice	
60-70	70-10	10-00	00-66	66-86	86-76	<i>L</i> 6-96	ANNÉE D'ACTIVITÉS:	

#### 10. Résumés des dossiers

Dans tous les dossiers classés durant l'année, l'avis de la décision du Conseil de la magistrature, motifs à l'appui, a été remis au plaignant et au juge visé, conformément aux instructions du juge sur l'avis (se reporter à la page B-26 du Guide des procédures du CMO, Annexe B).

Chaque numéro de dossier est constitué d'un préfixe de deux chiffres indiquant l'année d'activités du Conseil au cours de laquelle il a été ouvert. Ce préfixe est suivi d'un nombre de dossier séquentiel de trois chiffres et d'un nombre de deux chiffres indiquant l'année civile au cours de laquelle le dossier a été ouvert (par exemple, le dossier no 06-055/01 était le 55e dossier ouvert au cours de la sixième année d'activités, et il a été ouvert au cours de la sixième année d'activités, et il a été ouvert au cours de l'année civile 2001).

On trouvera ci-après une description détaillée de chaque plainte. Les renseignements signalétiques ont été supprimés.

Les 13 dossiers de plaintes restants rejetés parce qu'ils étaient hors du champ de compétence du Conseil combinaient ce qui a été jugé être une allégation non fondée de partialité, racisme, sexisme ou « actions irrégulières » avec une plainte relative à une question susceptible d'appel.

Quatorze des 43 dossiers de plaintes rejetés par le Conseil de la magistrature de l'Ontario se sont révélés sans fondement après enquête. Ces 14 dossiers de plaintes présentaient des allégations qu'un juge avait instruit une cause de manière irrégulière ou qu'il s'était livrté à une activité abusive ou illégale (par exemple, manipuler des dossiers judiciaires), des allégations d'inconduite du juge en cour, comme une attitude grossière ou agressive, etc., ou des allégations que la décision d'un juge était le résultat d'un présumé manque d'impartialité ou d'un présumé conflit d'intérêt ou parti pris.

Sur les 5 dossiers de plaintes restants qui ont été classés durant la huitième année d'activités, deux plaintes ont été abandonnées par le plaignant (dossiers n°s 07-015/01 et 07-043/02), un dossier a été renvoyé devant le juge en chef de la Cour de justice de l'Ontario, Brian W. Lennox, pour parler au juge en question (dossier n° 07-024/01) et deux dossiers ont été renvoyés à une audience publique (dossiers n°s 06-017/00 et 06-024/00).

9

#### 9. Résumé des plaintes

Au cours de sa huitième année d'activités, le Conseil de la magistrature de l'Ontario a reçu 49 plaintes, en plus des 31 dossiers de plaintes reportés des années précédentes. Sur ces 80 plaintes, 48 ont été réglées avant le 31 mars 2003, ce qui laisse 32 dossiers de plaintes qui seront reportés à la neuvième année d'activités. Près de la moitié des 32 dossiers de plainte reportés à la neuvième année ont été ouverts juste avant la fin de la huitième année ont été ouverts juste avant la fin de la huitième année (i.e., ils ont été ouverts en février et mars 2003).

Dans tous les cas, une enquête a été menée. Le souscomité des plaintes a examiné la lettre du plaignant et, au besoin, la transcription ou la bande sonore de l'instance judiciaire pour rendre une décision concernant la plainte. Dans certains cas où une telle démarche était indiquée, une enquête plus poussée a été menée. Dans tous les cas, les quatre membres de chaque comité de révision ont approuvé la décision relative à la plainte, telle que recommandée par le sous-comité des plaintes, après avoir examiné le dossier de la plainte et les résultats de l'enquête.

Le Conseil de la magistrature a rejeté 43 des 48 dossiers de plaintes qu'il a classés. Deux plaintes ont été rejetées pour abandon par les plaignants. Une seule plainte a été renvoyée devant le juge en chef de la Cour de justice de l'Ontario. Deux plaintes (concernant le même juge) ont été renvoyées pour audience.

Vingt-neuf des 43 plaintes rejetées par le Conseil de la magistrature de l'Ontario au cours de la période couverte par le présent rapport ont été jugées hors du champ de compétence du Conseil.

Les dossiers de plaintes rejetés pour ce motif portaient habituellement sur des questions susceptibles d'appel auprès d'un autre tribunal (par exemple, un plaignant n'a pas accepté le prononcé de la sentence d'un juge ou est insatisfait d'une décision) ou des questions qui n'étaient pas fondées sur une allégation réelle d'inconduite judiciaire, mais exprimaient l'insatisfaction du plaignant à l'égard de la décision du juge. C'était le cas de 16 des 29 dossiers de plaintes dans cette catégorie.

Le Conseil de la magistrature peut imposer les sanctions suivantes pour inconduite :

- donner un avertissement au juge;
- réprimander le juge;
- ordonner au juge de présenter des excuses au plaignant ou à toute autre personne;
- ordonner que le juge prenne des dispositions ou précises, par exemple, suivre une formation ou un traitement, pour pouvoir continuer de siéger à titre de juge;
- suspendre le juge, avec rémunération, pour une période indéterminée;
- suspendre le juge, sans rémunération, mais avec avantages sociaux, pendant une période maximale de trente jours.
- de trente Jours. (Remarque : le Conseil peut imposer toute combi naison des sanctions énoncées ci-dessus.)
- recommander au procureur général la destitution
- du juge. (Remarque : cette dernière sanction ne peut être combinée avec aucune autre.)

Le comité de révision ou un comité d'audience, lorsqu'une audience est tenue relativement à une plainte, peut examiner la question de l'indemnisation du juge pour les frais qu'il a engagés au titre des services juridiques nécessaires à une enquête ou à une audience. Le Conseil peut ordonner l'indemnisation du juge pour le coût de ces services juridiques (en se fondant sur un tarif qui ne dépasse pas le taux maximal normalement payé par le gouvernement de l'Ontario pour des services similaires) et le procureur général doit verser l'indemnité au juge conformément à la recommandation.

On trouvera à l'Annexe D du présent rapport une copie des dispositions législatives de la Loi sur les tribunaux judiciaires concernant le Conseil de la magistrature de l'Ontario.l'Ontario.

A la fin du processus d'enquête et de révision, toutes les décisions relatives aux plaintes soumises au Conseil de la magistrature auront été examinées par un total de six membres du Conseil : deux membres du sous-comité des membres du Conseil : deux membres du sous-comité des

plaintes et quatre membres du comité de révision.

Des dispositions relatives à la nomination de membres temporaires ont été prises pour veiller à ce qu'une majorité des membres du Conseil puissent tenir une audience sur une plainte si une telle audience a été ordonnée. Les comités d'audience doivent être composés d'au moins deux des six autres membres du Conseil qui n'ont pas participé au processus jusqu'à cette étape. Au moins un membre du comité d'audience doit être non juriste, et le juge en chef de l'Ontario, ou son suppléant de la Cour d'appel, doit présider le comité d'audience.

Les audiences tenues relativément à des plaintes sont publiques à moins que le Conseil ne détermine, conformément aux critères établis en vertu de l'alinéa 51.1(1) de la Loi sur les tribunaux judiciaires, que des circonstances exceptionnelles existent et que les avantages du maintien du caractère confidentiel prévalent sur ceux de la tenue d'une audience publique, auquel cas le Conseil peut tenir une partie ou la totalité de l'audience à huis clos.

Il n'est pas obligatoire que les instances autres que les audiences tenues pour examiner les plaintes portées contre certains juges soient publiques. L'identité d'un juge, après une audience à huis clos, n'est divulguée que dans des circonstances exceptionnelles déterminées, par le Conseil. Dans certaines circonstances, le Conseil est aussi habilité à interdire la publication d'informations susceptibles de divulguer l'identité d'un plaignant ou d'un juge. La Loi sur l'exercice des compétences légales, sauf certaines exceptions, s'applique aux audiences tenues relativement à des plaintes.

Après la tenue d'une audience, le comité d'audience du Conseil peut rejeter la plainte (qu'il ait conclu ou non que la plainte n'était pas fondée) ou, s'il conclut qu'il y a eu inconduite de la part d'un juge, il peut imposer une ou plusieurs sanctions, ou recommander au procureur général la destitution du juge.

iner les plaintes, sont frivoles ou constituent un abus de procédure. Le sous-comité chargé d'examiner les plaintes fait une enquête plus poussée sur toutes les autres plaintes. On trouvera à l'annexe B une description plus détaillée des procédures du Conseil de la magistrature.

Une fois l'enquête terminée, le sous-comité chargé d'examiner les plaintes (le « sous-comité des plaintes ») peut recommander le rejet de la plainte, son renvoi devant le juge en chef de la Cour de justice de l'Ontario pour un règlement informel, son renvoi à la médiation ou encore sa présentation au Conseil de la magistrature avec ou sans recommandation de tenir une audience. La décision du sous-comité des plaintes doit être unanime. Toute décision du sous-comité des plaintes n'est que consultative et sion du sous-comité des plaintes n'est que consultative et sen au comité des plaintes n'est que consultative et sen au consultative et sen révisée par le Conseil (ou par un comité de révision).

Le conseil peut établir un mécanisme de médiation, et seules les plaintes qui s'y prêtent (compte tenu de la nature des allégations) sont renvoyées à la médiation. Le Conseil doit élaborer des critères pour déterminer quelles plaintes peuvent être renvoyées à la médiation.

qui fait l'objet de la plainte. plaintes connaissent l'identité du plaignant ou du juge la procédure, seuls les deux membres du sous-comité des d'un avocat et d'un membre non juriste. À cette étape de que le juge en chef de la Cour de justice de l'Ontario), révision sont composés de deux juges provinciaux (autres tenue d'une audience relative à la plainte. Les comités de de justice de l'Ontario ou à un médiateur, ou ordonner la rejeter la plainte, la renvoyer au juge en chef de la Cour celui-ci (ou un comité de révision établi par celui-ci) peut sous-comité des plaintes renvoie une plainte au Conseil, révision) décide que la décision n'est pas appropriée. Si le sous-comité des plaintes si le Conseil (ou le comité de approuver la décision ou remplacer toute décision du examine la décision du sous-comité des plaintes et peut Le Conseil (ou un comité de révision établi par celui-ci)

Les membres du sous-comité des plaintes qui ont participé à l'examen préalable de la plainte ne participent pas à son examen par le Conseil ni à aucune audience subséquente portant sur cette plainte. De la même façon, les membres du comité de révision qui ont participé à l'examen d'une plainte ou à son renvoi ne participent pas à l'audition de la plainte, au cas où une audience est ordonnée.

des membres du sous-comité des plaintes et sa décision concernant une plainte est assujettie à la révision du comité de révision.

Ces changements aux procédures administratives du CMO ont eu pour effet de raccourcir la durée de traitement d'un dossier de plainte, d'environ une année à un peu plus de trois mois dans les cas où une plainte se trouve en-dehors de la compétence du CMO et qu'il n'y a pas d'enquête à mener. Dans ces cas, le seul « retard » dans le traitement du dossier se limite au temps qu'il faut pour porter le dossier devant un comité de révision lors de l'une des réunions régulières du CMO. Dans les cas où une enquête est nécessaire, les changements de procédures administratives ont permis d'économiser beaucoup de temps et la durée de traitement des dossiers plus complexes s'est trouvée réduite d'une année ou plus à six plexes s'est trouvée réduite d'une année ou plus à six mois ou moins.

On trouvera à l'annexe B une description détaillée des procédures du CMO.

## 7. Comité consultatif sur les nominations à la magistrature

Depuis la promulgation des modifications à la Loi sur les tribunaux judiciaires en février 1995, le Conseil de la magistrature ne s'occupe plus directement de la nomination des juges provinciaux. Toutefois, le Conseil est représenté par l'un de ses membres au Comité consultatif sur les nominations à la magistrature provinciale. L'honorable juge Marjoh Agro a été nommée par le CMO pour être sa représentante auprès du Comité.

#### 8. Procédure d'instruction des plaintes

Un sous-comité des plaintes, formé de membres du Conseil de la magistrature et qui comprend toujours un officier de justice nommé par l'autorité provinciale (un juge autre que le juge en chef de la Cour de justice de l'Ontario ou un protonotaire) et un membre non juriste, examine toutes les plaintes dont le Conseil est saisi. La loi applicable autorise le sous-comité chargé d'examiner les plaintes à rejeter les plaintes qui sont hors du champ de compétence du Conseil (à savoir les plaintes portées contre les juges fédéraux, les questions susceptibles d'appel, tre les juges fédéraux, les questions susceptibles d'appel, etc.) ou qui, de l'opinion du sous-comité chargé d'examete.

#### 4. Plan de formation

Le juge en chef de la Cour de justice de l'Ontario est tenu, en vertu du paragraphe 51.10 de la Loi sur les tribunaux judiciaires, de mettre en œuvre et de rendre public un plan de formation judiciaire continue des juges provinciaux. Ce plan de formation doit être approuvé par le Conseil de la magistrature comme il est prévu à l'alinéa présent rapport annuel, un plan de formation continue a été élaboré par le juge en chef, en collaboration avec le secrétariat à la formation, et approuvé par le Conseil de la magistrature. On trouvera à l'Annexe C une copie du la magistrature. On trouvera à l'Annexe C une copie du plan de formation continue pour 2002-2003.

#### 5. Communications

Le site Web du Conseil de la magistrature de l'Ontario continue de donner des renseignements sur le Conseil et sur les audiences à venir. Des copies des motifs des jugements sont affichées sur le site Web dès que ceux-ci sont rendus publics, et restent affichées jusqu'à ce que les motifs soient intégrés à un rapport annuel.

L'adresse du site Web du CMO est : www.ontariocourts.on.ca/

#### e. Procedures

greffière ou le greffier est toujours assujettie à l'évaluation dans la loi applicable. L'évaluation d'une plainte par la toire ou constitue un abus de procédure, tel que prévu de la compétence du CMO ou qu'elle est frivole, vexad'enquête si elle ou il estime que la plainte ne relève pas rejetée par le sous-comité des plaintes sans autre forme greffier peut aussi recommander qu'une plainte soit met de gagner un temps considérable. La greffière ou le demandé au moment où le dossier est ouvert, ce qui percomité des plaintes. Dans l'affirmative, le matériel est ciaire sera nécessaire aux fins d'enquête par le sousune transcription ou une bande sonore de l'instance judil'évaluation initiale de chaque dossier ouvert et décide si tives exigent que la greffière ou le greffier procède à ment des dossiers. Les nouvelles procédures administraannée faisant l'objet du rapport, afin d'accélèrer le traitement de procédures du CMO, au cours de la dernière Certains changements mineurs ont été apportés au docu-

été nommé par le juge en chef pour servir au besoin de membre temporaire du Conseil de la magistrature de l'Ontario :

Lhonorable juge Bernard M. Kelly

#### 3. Renseignements administratifs

Des locaux séparés adjacents au bureau du juge en chef, au centre-ville de Toronto, sont utilisés à la fois par le Conseil de la magistrature de l'Ontario et par le Conseil d'évaluation des juges de paix. La proximité entre le bureau du Conseil et celui du juge en chef permet à ces deux conseils de partager, selon les besoins, le personnel de bureau et d'administration ainsi que les services informatiques et de soutien, sans avoir à se doter d'un personnel de soutien d'envergure.

Les locaux des conseils servent principalement aux réunions des deux conseils et de leurs membres. Chaque conseil a ses propres numéros de téléphone et de télécopieur et ses propres arricles de papeterie. Par ailleurs, chaque conseil a un numéro sans frais réservé à l'usage du public à l'échelle de l'Ontario et un numéro sans frais à l'intention des personnes qui se servent de téléscripteurs.

Au cours de la huitième année d'activités du Conseil, le personnel du Conseil de la magistrature de l'Ontario et du Conseil d'évaluation des juges de paix était composé d'une greffière, d'un greffier adjoint (pour une partie de l'année) et d'une secrétaire :

VALERIE P. SHARP, LL.B. .........Greffière adjoint

(du 23 septembre 2002 au début de son congé parental
le 24 sévrier 2003)

ANA BRIGIDO ......Grefflère adjointe intérimaire
(à partir de sévrier 2003)

PAUL HAMMOND
Président et directeur général, Muskoka Transport Ltd...
WILLIAM JAMES
Président, Inmet Mining Corporation
Président, Inmet Mining Corporation
Président, Inmet Mining Corporation

#### Membres temporaires

- (à compter du 28 février 2001)

Un poste de membre de la collectivité – vacant

Ontario Metis Aboriginal Association

Membres de la collectivité:

Les articles 87 et 87.1 de la Loi sur les tribunaux judiciaires habilitent le Conseil de la magistrature de l'Ontario à statuer sur les plaintes portées contre toute personne qui était protonotaire de la Cour suprême avant le lei septembre 1990 et contre tout juge provincial qui était affecté à la Cour provinciale (Division civile) avant le lei septembre 1990. Lorsque le Conseil de la magistrature de l'Ontario instruit une plainte portée contre un protonotaire ou un juge de l'ancienne Division civile, le juge qui est membre du sous-comité des plaintes est remplacé par un membre temporaire nommé par le juge en chef de la Cour supérieure de justice. Il peut s'agir, selon le cas, d'un protonotaire ou d'un juge provincial qui siège à la Cour des petites créances.

Durant la période couverte par le présent rapport, les personnes suivantes ont été nommées membres temporaires du Conseil de la magistrature de l'Ontario pour traiter les plaintes portées contre ces juges et protonotaires nommés par l'autorité provinciale:

PROTONOTAIRES JUGES

Basil T. Clark, c.r. Monsieur le juge M. D. Godfrey R. B. Linton, c.r. Pamela Thomson Pamela Thomson

Le paragraphe 49(3) de la Loi sur les tribunaux judiciaires autorise le juge en chef de la Cour de justice de l'Ontario à nommer un juge provincial à titre de membre temporaire du Conseil de la magistrature de l'Ontario pour satisfaire aux exigences législatives en matière de quorum pour les réunions, les comités d'examen et les comités d'audience du Conseil de la magistrature. Le juge cidandience du Conseil de la magistrature. Le juge cidescous mentionné de la Cour de justice de l'Ontario a dessous mentionné de la Cour de justice de l'Ontario a

#### 2. Membres titulaires

Durant sa huitième année d'activités (soit du let avril 2002 au 31 mars 2003), le Conseil de la magistrature de l'Ontario était composé des membres suivants :

### Membres de la magistrature

B. Roy McMurity .....(Toronto)

Brian W. Lennox ......xonnox

DE CONTARIO JUGE EN CHEF ADJOINT DE LA COUR DE JUSTICE

(Toronto)....

JUGE PRINCIPAL RÉGIONAL

DE L'ONTARIO

Raymond P. Taillon (à compter du 21 novembre 2001) .....(Lindsay)

TY CONK DE INSTICE DE L'ONTARIO DEUX JUGES NOMMÉS PAR LE JUGE EN CHEF DE

L'honorable juge Marjoh Agro.....(Milton)
L'honorable juge Deborah Livingstone

Membres avocats
Trésorier du barreau du haut-canada

AVOCAT DÉSIGNÉ PAR LE TRÉSORIER DU BARREAU DU HAUT-CANADA

Julian Porter, c.r. .....(Toronto)

Vern P. Khrishna, c.r. (Toronto)

DU HAUT-CANADA Du haut-canada

Patricia D.S. Jackson

#### 1. Composition et modalités de nomination

Le Conseil de la magistrature de l'Ontario est constitué des membres suivants :

- le juge en chef de l'Ontario (ou un autre juge de la Cour d'appel désigné par le juge en chef);
  le juge en chef de la Cour de justice de l'Ontario
- (ou un autre juge de cette Cour désigné par le juge en chef);
- le juge en chef adjoint de la Cour de justice de l'Ontario;
- un juge principal régional de la Cour de justice de l'Ontario nommé par le lieutenantgouverneur en conseil sur la recommandation du procureur général;
- deux juges de la Cour de justice de l'Ontario nommés par le juge en chef de cette Cour;
- le trésorier du Barreau du Haut-Canada ou un autre conseiller du Barreau qui est avocat, désigné par le trésorier;
- un avocat qui n'est pas conseiller du Barreau;
   du Haut-Canada, nommé par le Barreau;
- quatre personnes qui ne sont ni juges ni avocats, nommées par le lieutenant-gouverneur en conseil sur la recommandation du procureur général.

Le juge en chef de l'Ontario préside toutes les instances concernant des plaintes portées contre des juges particuliers, sauf les réunions du comité d'examen qui sont présidées par un juge provincial désigné par le Conseil de la magistrature. Le juge en chef de l'Ontario préside aussi les réunions tenues pour examiner les demandes relatives aux besoins d'un juge en taison d'une invalidité ou pour examiner le maintien en fonction d'un juge en chef ou de aux possiminer le maintien en fonction d'un juge en chef ou de d'un juge en chef adjoint. Le juge en chef de la Cour de justice de l'Ontario préside toutes les autres réunions du justice de l'Ontario préside toutes les autres réunions du justice de l'Ontario préside toutes les autres réunions du Conseil de la magistrature.

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### DE LA MAGISTRATURE DE L'ONTARIO DE LA MAGISTRATURE DE L'ONTARIO

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#### TABLE DES MATIÈRES

#### Lettre à l'honorable Michael Bryant

	Madame la juge Lesley M. Baldwin	
	dans l'affaire d'une plainte concernant	
E-2	rexe «E» : Conseil de la Magistrature de l'Ontario	ли¥
D-14	- 1-G eartinentes	ıuy
9-D	- I-O Continue Continue	ıuy
17-B	- I-A OMO ub esquised de procédures du CMO	ıuy
7-V	A-1 -	ıuy
67-9	Résumé des dossiers	(01
9-5	Résumé des plaintes	(6
Z-E	Procédure d'instruction des plaintes	(8
8	Comité consultatif sur les nominations à la magistrature	(1
5	Procédures	(9
5	Communications	(5
3	Plan de formation	(†
7	Renseignements administratifs	(£
7-1	Метргея	(7
I	Composition et modalités de nomination	(1
	roduction	ıuı

NOIA: Pour faciliter la lecture, le masculin est souvent utilisé dans son sens générique pour désigner l'un ou l'autre sexe.



#### INTRODUCTION

La période couverte par le présent rapport annuel s'étend du ler avril 2002 au 31 mars 2003.

magistrature provinciale. sein du Comité consultatif sur les nominations à la aux, il est représenté par l'un de ses membres au directement de la nomination des juges provincique le Conseil de la magistrature ne s'occupe pas plainte) ou à la demande du juge en question. Bien plainte (si l'invalidité était un facteur dans la telle ordonnance peut être rendue par suite d'une incapable d'exercer les fonctions de sa charge. Une besoins d'un juge qui, en raison d'une invalidité, est rendre une ordonnance pour tenir compte des l'Ontario. Le Conseil de la magistrature peut aussi élaborées par le juge en chef de la Cour de justice de maintien en fonction et les normes de conduite juges provinciaux et a approuvé les critères de approuve annuellement le plan de formation des les juges et protonotaires provinciaux. En outre, il sur les plaintes dont il est saisi par le public contre Le Conseil de la magistrature de l'Ontario enquête

Durant la période couverte par le présent rapport annuel, le Conseil de la magistrature de l'Ontario exerçait sa compétence sur environ 260 juges et protonotaires provinciaux nommés par la province.



#### CONSEIL DE LA MAGISTRATURE DE L'ONTARIO

Le 31 mars 2004

L'honorable Michael Bryant Procureur général de l'Ontario 720, rue Bay, 11<sup>e</sup> étage Toronto (Ontario) M5G 2K1

Monsieur le procureur général,

Nous avons le plaisir de vous présenter le rapport annuel de la huitième année d'activités du Conseil de la magistrature de l'Ontario, conformément au paragraphe 51 (6) de la Loi sur les tribunaux judiciaires. La période couverte par le présent rapport s'étend du 1<sup>er</sup> avril 2002 au 31 mars 2003.

Veuillez agréer, Monsieur le procureur général, l'expression de nos sentiments respectueux.

Brian W. Lennox

Juge en chef Cour de justice de l'Ontario

R. Roy McMurity Juge en chef de l'Ontario

Roy R. McMurtry
Juge en chef de la magistrature de l'Ontario



Brian W. Lennox Le juge en chef cour de justice de l'ontario

Coprésident, Conseil de la magistrature de l'Ontario

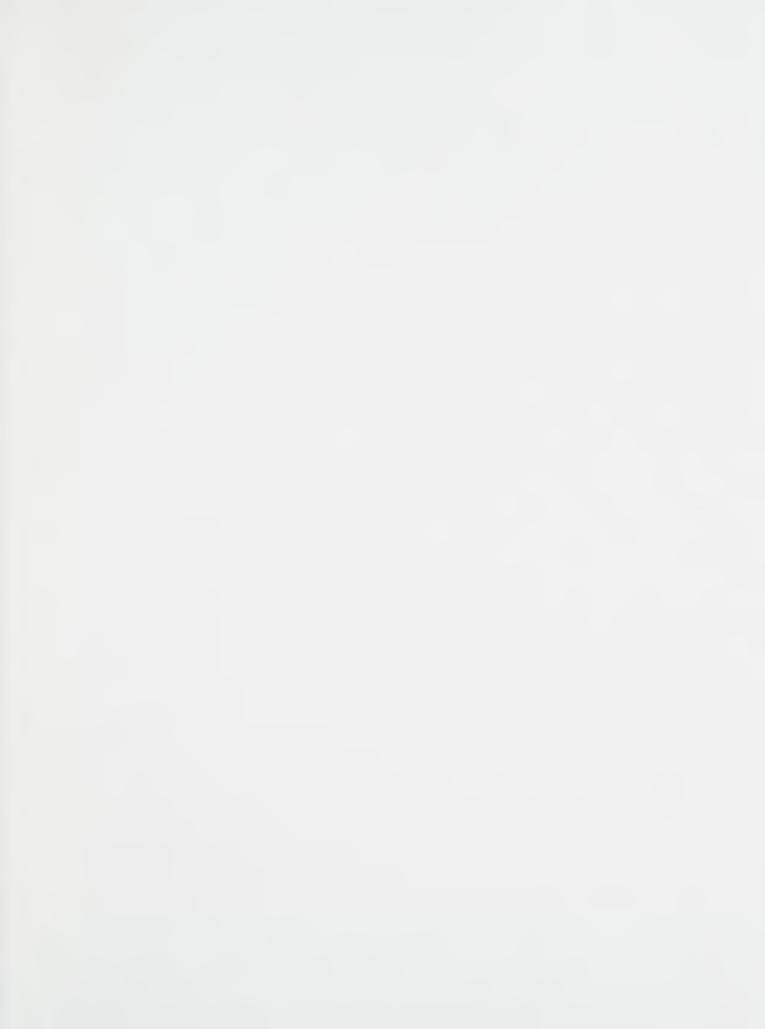


# **KYPPORT ANNUEL**HUITIEME

## 2002 – 2003

# DE L'ONTARIO

CONSEIL DE LA MAGISTRATURE



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# RAPPORT ANNUEL HUITIÈME

2002 - 2003

# CONSEIL DE L'ONTARIO CONSEIL DE LA MAGISTRATURE





